79-844

Supreme Court, U. S.
FILED
NOV 30 1979
ROBAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No.

ROSEMARY FURMAN, d/b/a
NORTHSIDE SECRETARIAL SERVICE,

Appellant,

v.

THE FLORIDA BAR.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

JURISDICTIONAL STATEMENT

ALAN B. MORRISON
PAUL ALAN LEVY

Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704

ALBERT J. HADEED

Suite A
115 N.E. 7th Avenue
Gainesville, Florida 32601
(904) 377-8288

Attorneys for Appellant

November 30, 1979

THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTION PRESENTED	3
STATEMENT OF THE CASE	3
A. *Facts*	3
B. *Proceedings Below*	6
THE QUESTION PRESENTED IS A SUBSTANTIAL ONE WHICH HAS NOT PREVIOUSLY BEEN CONSIDERED BY THIS COURT	10
CONCLUSION	15

TABLE OF AUTHORITIES

Cases:

Adkins v. E.I. Dupont de Nemours Co., 335 U.S. 331 (1948)	11
Airey Case, Council of Europe, European Court of Human Rights, decided October 9, 1979	13-14
Bates v. State Bar of Arizona, 433 U.S. 350 (1977)	2, 5
Boddie v. Connecticut, 401 U.S. 371 (1971)	7, 10, 12

Page

Bounds v. Smith,
430 U.S. 817 (1977) 14

Bradley v. Jones,
297 So.2d 198 (La. 1974) 13

Brant v. Powers,
339 F. Supp. 65 (W.D. Wis. 1972) 12

The Florida Bar v. Brumbaugh,
355 So.2d 1186 (Fla. 1978) 6-9, 12

Grissom v. Dade County,
293 So.2d 59 (Fla. 1974) 3

Griswold v. Connecticut,
381 U.S. 479 (1965) 11

In re Smiley,
36 N.Y.2d 433, 330 N.E.2d 53, 369 N.Y.S.2d 87
(1975) 13

Johnson v. Avery,
393 U.S. 483 (1969) 7, 11, 12, 14

Moeck v. Zajackowski,
385 F. Supp. 463 (W.D. Wis. 1974) 12

Ohralik v. Ohio State Bar Ass'n,
436 U.S. 447 (1978) 2

Ortwein v. Schwab,
410 U.S. 656 (1973) 10

Payne v. Superior Court of Los Angeles Cty.,
17 Cal.3d 908, 553 P.2d 565, 132 Cal. Rptr. 403
(1976) 12

Planned Parenthood v. Danforth,
428 U.S. 52 (1976) 11

Page

Procunier v. Martinez,
416 U.S. 396 (1974) 14

Salas v. Cortez,
24 Cal.3d 22, 593 P.2d 226, 154 Cal. Rptr. 529,
cert. denied, ___ U.S. ___, 48 U.S.L.W. 3241
(Oct. 9, 1979) 13

United States v. Kras,
409 U.S. 434 (1973) 10

Zablocki v. Redhail,
434 U.S. 374 (1978) 10

Statutes, Constitutions, Conventions:

Convention for the Protection of Human Rights and
Fundamental Freedoms, Article 43 13

Florida Constitution

Article V, Section 15 2
Article I, Section 21 4

Florida Stat. (1977)

§ 61.052 4
§ 61.021 4
§ 454.18 4

Integration Rule, The Florida Bar

Article II, Section 2 2
Article XVI 2

28 U.S.C. § 1257(2) 2

United States Constitution,
Fourteenth Amendment 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No.

ROSEMARY FURMAN, d/b/a
NORTHSIDE SECRETARIAL SERVICE,

Appellant,

v.

THE FLORIDA BAR.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

JURISDICTIONAL STATEMENT

This appeal raises the question of whether a state may constitutionally apply its otherwise valid rules prohibiting the unauthorized practice of law to preclude indigents from utilizing lay services that are essential to exercise their fundamental right to obtain a divorce.

OPINIONS BELOW

The opinion of the Supreme Court of Florida, which appears at pages 1a-10a, is not officially reported. The Court's order granting limited rehearing and modifying its

earlier opinion appears at pages 11a-13a and is also not reported. The report of the court-appointed Referee appears at pages 25a-114a.

JURISDICTION

The proceeding giving rise to this appeal was brought upon petition of the Florida Bar pursuant to Article XVI of the Integration Rule of the Florida Bar and Article V, Section 15 of the Florida Constitution. The petition sought to enjoin appellant from violating the prohibition on the unauthorized practice of law contained in Article II, Section 2 of the Integration Rule of the Florida Bar. The Supreme Court of Florida issued its opinion on May 10, 1979, and its order granting limited rehearing and modifying its earlier opinion on November 1, 1979. A timely notice of appeal was filed on November 16, 1979. (115a).

Because appellant has drawn into question the validity of Article II, Section 2 of the Integration Rule of The Florida Bar under the Constitution of the United States, insofar as that Rule precludes her from assisting indigents in obtaining dissolutions of their marriages, and because the decision below sustained the validity of the Rule, this Court has jurisdiction under 28 U.S.C. § 1257(2). *Bates v. State Bar of Arizona*, 433 U.S. 350, 358 (1977); *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 454 (1978).

Article II, Section 2 of the Integration Rule of the Florida Bar is found at 32 Fla. Stat. Ann. p. 499 (1967 ed.) and provides as follows:

> No person shall engage in any way in the practice of law in this state unless such person is an active member of The Florida Bar in good standing, except that a practicing attorney of another state, in good standing, who has professional business in a court of record of this state may, upon motion, be permitted to practice for the purpose of such business only, when it is made to appear that he has associated and appearing with him in such business an active member of The Florida Bar.

QUESTION PRESENTED

May a state constitutionally apply its rules on the unauthorized practice of law to require indigents seeking an adoption or a divorce, who are unable to complete the necessary papers themselves, to obtain assistance from an attorney whose fees they cannot pay, instead of from a secretary whose services they can afford?[1]

STATEMENT OF THE CASE

A. Facts

In Florida, as in all states, a marriage may be dissolved only by the state, and in Florida dissolutions are accomplished through the courts. Florida is a "no-fault" divorce state,

---

[1] The Bar's petition and the Court's opinion included appellant's assistance to individuals seeking adoptions and divorces. (1a). Since in Florida "adoption is exclusively a state-created right," the constitutional principles that appellant relies on have been applied to that area as well. *Grissom v. Dade County*, 293 So.2d 59, 62 (Fla. 1974). Because divorce and adoption are identical for these purposes, appellant's question presented and constitutional argument apply equally to both. However, for simplicity no further reference will be made to adoptions in this Statement.

§ 61.052, Fla. Stat. (1977), so that if a marriage has been "irretrievably broken," the court must grant the divorce (referred to in Florida as a dissolution of marriage), provided that the petitioner meets the six-month residency requirement of § 61.021, Fla. Stat. (1977). Florida law also specifically provides that individuals are entitled to represent themselves in civil actions, including those seeking dissolution of a marriage. Article I, Section 21, Fla. Const.; § 454.18, Fla. Stat. (1977).

Despite this apparent simplicity, it is an undisputed fact that most people are unable to obtain a divorce in Florida without assistance. Court procedures are generally unfamiliar to lay persons, and many find the process frightening. Moreover, the court clerks do not provide any meaningful assistance tc those seeking to represent themselves in divorce matters.

For thousands of Florida residents, the normal response – hire a lawyer to help – is foreclosed by one fact: the cost. Among those unable to pay for an attorney, some are eligible for free legal services, but even for them, the barriers to actually obtaining assistance are significant. For instance, in twenty-five counties in Florida, there is either no free legal services program, or the program provides no matrimonial services.[2] And in Jacksonville, where appellant works, even those who fall within the legal services guidelines and are entitled to assistance in obtaining a dissolution of marriage must, with rare exceptions, wait six months following their separation before they can see an attorney. (Trial Tr. 144-46). More importantly, many who cannot afford attorneys are denied free legal assistance because program fund-

[2] *See* 52 Fla. Bar. J. 595-98 (Sept. 1978); Dep. of W.P. Healy at 3-7 (July 19, 1978).

ing limitations make income eligibility requirements so low that many truly indigent persons are excluded entirely. (*Id.* at 135-37).

It was to fill this vacuum that appellant, a trained legal secretary with over thirty years of experience, began to assist self-filers in obtaining dissolutions of their marriages. Having worked for attorneys in divorce and other areas, she was familiar with the standardized forms and procedures and was able to prepare the necessary papers for those seeking to represent themselves. From the outset of her efforts in 1975, she has clearly stated that she is not a lawyer, and at no time has she represented any person in court or signed any pleadings. What she has done has been to take the information that her clients have given her and type the necessary documents. In addition, she has given her customers a detailed practical explanation of how to proceed, including where to file their cases, what to do with each copy of the papers, how to pay the court fees, how to set up an appointment for the final hearing, whom to bring to the hearing, and even how to address the court. (78a-81a). For all of this she charged no more than $50, regardless of the work involved, and she often accepted $25 or even nothing if that was what the client could afford. (27a, 77a). At the time she began helping self-filers, members of the Bar were charging $350 for a consented-to divorce, involving no property or custody issues. Although attorneys' fees for divorces have been reduced somewhat following this Court's decision in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), they are still far in excess of what most of appellant's clients can afford. As a result of appellant's assistance, however, several hundred of her clients were able to handle their cases and successfully dissolved their own marriages. Without it, most of them would have been unable to proceed at all.

B. Proceedings Below

In March 1977, appellant, doing business as the Northside Secretarial Service, was served with a petition, filed by the Florida Bar, and a rule to show cause, issued by the Supreme Court of Florida, why she should not be enjoined from engaging in the practice of law. Her *pro se* answer denied that she was practicing law, raised a constitutional defense, and sought dismissal of the petition. On August 1, 1977, in accordance with its standard practice in cases of this type, the Florida Supreme Court appointed a retired trial judge as a Referee to take testimony and report his factual findings. The Bar then filed an amended petition on September 23, 1977, and appellant, who by then had obtained counsel, filed an answer contending, among other grounds, that to prohibit her from assisting indigents would violate their constitutional right to obtain a divorce by requiring them to pay for the services of an attorney which they could not afford.

While discovery was proceeding, the Supreme Court of Florida issued its opinion in *The Florida Bar v. Brumbaugh*, 355 So.2d 1186 (1978), which changes the rules governing what lay persons could do in assisting individuals seeking to obtain a dissolution of their marriage. Prior to that decision, it had been unlawful for lay persons even to sell blank forms for use in a divorce proceeding if instructions were sold with them. In addition to revoking that rule, the Court specifically authorized persons such as appellant and Ms. Brumbaugh to type legal papers tailored to the client's circumstances. *Id.* at 1194. In doing so, the Court expressly recognized the enormous need for assistance for those who are unable to pay an attorney and who wish to represent themselves. Nonetheless, the Court concluded that it was desirable to limit the scope of lay assistance, and

therefore it forbade the typist from orally asking or answering any questions pertaining to the preparation of the necessary papers. *Id.*

Appellant initially attempted to conform her practices to *Brumbaugh* by developing detailed forms and instructions to try to handle as much as possible in writing. She eventually concluded that she could not provide adequate services in this way, since both she and the Bar viewed the *Brumbaugh* opinion as precluding her from even correcting mistakes, clarifying the ambiguous, eliminating contradictions, or assisting at all where the client was unable to read and write. Accordingly, despite the liberalization in *Brumbaugh*, appellant determined to continue to oppose the Bar's action.

On July 18, 1978, the Referee heard testimony in the case after the parties had stipulated to many of the facts, including that no client of appellant had ever suffered any harm from her services. (28a). Appellant's defense was based on two principal arguments. First, she sought a clarification and/or modification of the *Brumbaugh* ruling insofar as it prevented her from effectively communicating orally or in writing with her clients. Second, relying on this Court's decisions in *Boddie v. Connecticut*, 401 U.S. 371 (1971), and *Johnson v. Avery*, 393 U.S. 483 (1969), she contended that, to the extent that *Brumbaugh* precluded her from providing effective services to indigents in divorce cases, it violated their fundamental constitutional rights.

After the hearing and without benefit of briefs, the Referee issued a lengthy report, most of which consisted of quotations from the record. His findings reflect a plain distaste for lay assistance, as demonstrated by his assertion that appellant's practices were creating "a grave danger to the citizens of Florida" (109a-112a, Findings 2, 5, 6 & 7),

even though he adopted the parties' stipulation that none of appellant's customers had suffered any harm as a result of her services. (28a). He did, however, recognize that there were many individuals who could not afford needed legal services and urged the Court and the Bar to correct the matter immediately. (112a-113a, Findings 8-10). But in the end he urged that appellant be "prohibited from typing legal papers of any kind, [or] filling blanks on any legal forms" (113a, Finding 11), precluding what the Court had specifically authorized only seven months before in *Brumbaugh*. Moreover, he recommended that appellant be held in contempt even though the Bar had not sought such relief in its petition. (113a, Finding 11).

The case then went to the Supreme Court of Florida for a decision on the merits. Briefs were filed, and oral argument held on February 9, 1979. Once again, appellant defended against the Bar's charges by seeking modification and/or clarification of *Brumbaugh*, and by asserting that the state's unauthorized practice rules could not constitutionally be applied to preclude her from assisting indigents seeking a divorce.

On May 10, 1979, the Court issued its opinion in which it concluded that appellant had been engaged in the unauthorized practice of law. In response to her request for clarification or modification of *Brumbaugh*, the Court simply repeated what it had said in *Brumbaugh* and announced, "Our directions could not have been clearer." (8a). As to appellant's constitutional argument, which had occupied more than two-thirds of the argument portion of her brief, the Court noted that she made such a claim (2a), but failed to devote even a sentence to refuting it. Even more serious to appellant was the Court's finding that she was in contempt of court and its direction to the parties for

further briefing on the punishment to be meted out to her. (9a).

Because the petition and rule to show cause had sought only an injunction, appellant filed a motion for rehearing in which she objected on due process and fairness grounds to the contempt finding and to any punishment against her, particularly since the case had been tried under Florida's civil injunction and not its criminal contempt rules. (14a-16a). Appellant also argued that even if a finding of contempt were justifiable, her defense had been undertaken in good faith, and she should not be punished for having asserted it. (17a-18a). Her submission also included a further request for clarification of the scope of *Brumbaugh* (19a-22a), pointing out that the Florida Bar itself had made a similar request in its petition for rehearing in *Brumbaugh*. (21a, ¶ 29). Appellant also sought rehearing on her constitutional claim that the Court's unauthorized practice rules, as applied, violated the due process and equal protection rights of indigents. (19a). Almost six months after the original opinion, the Court issued a brief order granting a limited rehearing, but making no changes other than removing the references to contempt and eliminating any punishment. (11a-12a). On November 16, 1979, appellant filed her notice of appeal to this Court.[3]

---

[3] Under the Florida practice, no formal injunction order is issued, and the Court's opinion becomes the basis for any possible contempt citation. Because of the vagueness of the opinion, it will be difficult for appellant to comply with *Brumbaugh*, while at the same time providing as much service as she can to her clients. However, until a proceeding for contempt is brought against appellant, a constitutional challenge to the opinion on vagueness grounds appears premature.

THE QUESTION PRESENTED IS A SUBSTANTIAL ONE WHICH HAS NOT PREVIOUSLY BEEN CONSIDERED BY THIS COURT.

In *Boddie v. Connecticut*, 401 U.S. 371 (1971), this Court, with only Mr. Justice Black dissenting, held that it was a violation of the Fourteenth Amendment for a state to deny access to its courts to indigents seeking a divorce solely because they were unable to pay the state-imposed $60 in filing fees and service of process costs.[4] Although this Court has subsequently declined to apply *Boddie* in bankruptcy and welfare cases,[5] it has reaffirmed its ruling that the Constitution does not permit a state to deny a person the fundamental right to obtain a divorce, where the state maintains a monopoly over that right, solely because the person seeking it cannot afford to pay for it. *See, e.g., Zablocki v. Redhail*, 434 U.S. 374, 385 n.10, 394, 400 (1978) (majority and concurring opinions). The question presented on this appeal is whether the rationale of *Boddie* also precludes the imposition of other financial barriers, *i.e.*, those arising from the operation of Florida's unauthorized practice of law rules. Although the payments here are made to private attorneys, and there is no legal requirement that any person retain an attorney, the practical barriers created by Florida's unauthorized practice rules, as applied to indigents who can only afford lay assistance in obtaining their divorces, are identical to those created by the statutory fees in *Boddie*.[6]

---

[4] The majority decided the case on due process grounds; Mr. Justice Douglas concurred on equal protection grounds.

[5] *United States v. Kras*, 409 U.S. 434 (1973); *Ortwein v. Schwab*, 410 U.S. 656 (1973).

[6] Because there is no precise definition of indigency, a state may establish reasonable rules for defining it, provided that it does not require an individual to become "absolutely destitute to enjoy the benefit", since otherwise the result would be to "throw its beneficiaries into the category of public charges." *Adkins v. E.I. Dupont de Nemours & Co.*, 335 U.S. 331, 339 (1948) (construing the federal *in forma pauperis* statute).

The second line of cases supporting appellant is grounded in *Johnson v. Avery*, 393 U.S. 483 (1969), in which this Court held that a state may not apply its unauthorized practice rules to discipline prisoners for assisting fellow inmates who are otherwise without legal services. In so ruling, this Court analyzed the rule in terms of its practical effect on the ability of prisoners to seek judicial remedies and concluded that "unless and until the State provides some reasonable alternative to assist inmates in the preparation of petitions for post-conviction relief, it may not validly enforce a regulation such as that here in issue, barring inmates from furnishing such assistance to other prisoners." 393 U.S. at 490. In this case, although appellant's clients have the right to retain an attorney, their indigency denies them actual access to a lawyer, but not to persons such as appellant whose fees are much lower. Just as this Court ruled in *Johnson* that the state may not utilize its unauthorized practice rules to deny to those physically imprisoned their only source of legal assistance, appellant urges this Court to rule that Florida may not constitutionally use its unauthorized practice rules to deny access to legal assistance needed to obtain divorce to those who are physically free, but economically imprisoned in indigency.[7]

---

[7] Although appellant is not herself an indigent, *Johnson* establishes that she may assert the rights of others who are denied access to the courts, particularly since she is doing so in a defensive posture. *Accord, Griswold v. Connecticut*, 381 U.S. 479, 481 (1965), and *Planned Parenthood v. Danforth*, 428 U.S. 52, 62 (1976).

The response to appellant's constitutional argument has been virtually non-existent. At the hearing before the Referee, the Bar offered no evidence in response to appellant's proof of the need for assistance in preparation of divorce papers, the barriers to access created by the high prices lawyers charged, and the absence of reasonably priced alternatives. In its brief the Bar argued that appellant's own $50 fee is also a barrier, neglecting to point out that her all-inclusive charge was one-fourth of the lowest available fee for consented-to divorces with no property or custody agreement and that she reduced her charges if the client couldn't pay even that cost. (Trial Tr. 46-48, 67-72). Beyond that, it simply replied that *Boddie* and *Johnson* were different cases without explaining why their rationales did not apply. And since the Florida Supreme Court did not even discuss appellant's claim, its justification can only be surmised from *Brumbaugh*, where it expressed concern that individuals might unjustifiably rely on a secretary's advice in seeking a dissolution of their marriage. 355 So.2d at 1193-94. But when the alternative is a denial of all access, this concern cannot justify the broad restriction imposed on providing assistance to indigents seeking to exercise a fundamental right.

No court has ever passed on this precise constitutional question, but a number of authorities strongly support appellant's position. For example, *Boddie* has been applied to preclude a state from requiring an indigent prisoner to pay for his travel to court, where to do so would deny him his right to a hearing on his federal civil rights claim, *Moeck v. Zajackowski*, 385 F. Supp. 463 (W.D. Wis. 1974), or his right to defend an action for divorce. *Brant v. Powers*, 339 F. Supp. 65 (W.D. Wis. 1972). Similarly, in *Payne v. Superior Court of Los Angeles Cty.*, 17 Cal.3d 908, 553 P.2d 565, 132 Cal. Rptr. 403 (1976), a civil default judgment against a prisoner was set aside because he had not been able to hire a lawyer to represent him.

While no court has ever required the appointment of counsel for an individual seeking a divorce, several have indicated that they would do so in appropriate circumstances. *See Bradley v. Jones*, 297 So.2d 198 (La. 1974), and *In re Smiley*, 36 N.Y.2d 433, 330 N.E.2d 53, 369 N.Y.S.2d 87 (1975). And in an only slightly different context, the Supreme Court of California has ruled that indigent defendants in a state proceeding to determine paternity must have counsel appointed for them because without legal assistance they would be denied meaningful access to the courts. *Salas v. Cortez*, 24 Cal.3d 22, 593 P.2d 226, 154 Cal.Rptr. 529, *cert. denied*, ___ U.S. ___, 48 U.S.L.W. 3241 (Oct. 9, 1979). Because appellant seeks only the less drastic ruling of removing the unauthorized practice of law barrier, these decisions strongly support her position.

Perhaps the most instructive decision is one which does not come from the courts of this nation but from the Council of Europe in the *Airey Case*, decided October 9, 1979.[8] The European Court of Human Rights, sitting in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms, concluded that Ireland had violated fundamental human rights by requiring a person seeking a judicial separation to pay for the cost of an attorney when she was financially unable to do so. In so ruling, the Court noted that her theoretical right to represent herself was not dispositive because it does not provide "an effective right of access"

---

[8] Copies of the opinion are being lodged with the Court and provided to counsel for the Bar.

due to the practical difficulties involved in *pro se* representation. Slip Op. at 10. If international rights are violated by such a denial, appellant has surely presented a substantial question as to whether the United States Constitution forbids such a deprivation as well.

The other source of appellant's constitutional claim – *Johnson v. Avery* – has been followed in *Procunier v. Martinez*, 416 U.S. 396 (1974), which set aside a prohibition on the use of law students and paralegals to interview inmates, and found the rule to be "an unjustifiable restriction on the right of access to the courts" which created a "substantial burden" on the inmates. *Id.* at 419, 420. Moreover, this Court's most recent application of *Johnson* – *Bounds v. Smith*, 430 U.S. 817 (1977) – required North Carolina not simply to cease creating impediments to meaningful access, but also to spend its funds to provide a law library and other necessary assistance for indigent prisoners. The key to these cases is that access be meaningful, and this Court has consistently recognized that practical, as well as formal, barriers must be removed if that goal is to be achieved.

Appellant seeks no independent right to do what lawyers do. She recognizes that it is only the existing barriers to the delivery of legal services that give rise to her constitutional claim that she is entitled to perform services for indigents seeking a divorce or an adoption, services which have never exceeded 25% of her secretarial business. (91a). She claims no right to appear in court to represent indigents, nor to sign pleadings in her own name, and she acknowledges that she must clearly disclose that she is not a lawyer. She asks only that this Court rule that where the fundamental right of divorce is at stake, and where the state maintains a monopoly over it, the state may not use its otherwise valid unauthorized practice rules to prohibit indigents

from using the only reasonably available assistance they can afford to exercise that right.

The Referee, whose overt hostility to appellant was plain in both his rulings at trial and in his findings, perceived the problem and admonished the Bar to solve it. The Florida Supreme Court also recognized it and directed the Bar to complete a study by January 1, 1980, a study which today has barely begun. In the meantime, until studies are completed, and solutions are developed and implemented, thousands will go without the assistance that everyone concedes is necessary in order to enable them to exercise their fundamental rights. Whether in the interim Florida may constitutionally bar indigents from obtaining such needed assistance except from attorneys, whom the state admits they cannot afford, is a question worthy of plenary consideration by this Court.

CONCLUSION

For the foregoing reasons, this Court should note probable jurisdiction and set the case down for full briefing and argument.

Respectfully submitted,

ALAN B. MORRISON
PAUL ALAN LEVY
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704

ALBERT J. HADEED
Suite A
115 N.E. 7th Avenue
Gainesville, Florida 32601
(904) 377-8288

Attorneys for Appellant

November 30, 1979

Supreme Court of Florida

No. 51,226

THE FLORIDA BAR, Petitioner,

vs.

ROSEMARY W. FURMAN, etc., Respondent.

[May 10, 1979]

PER CURIAM

The Florida Bar has petitioned this court to hold Rosemary W. Furman, d/b/a/ Northside Secretarial Service, in contempt of this court and to enjoin her from further unauthorized practice of law in the State of Florida. Our jurisdiction to rule in this matter is provided by article V, section 15 of the Florida Constitution and by The Florida Bar Integration Rule, article XVI. We find the respondent in contempt of this court and permanently enjoin her from the further unauthorized practice of law.

The Florida Bar alleged, through an amended petition dated September 23, 1977, that Furman, a non-lawyer, engaged in the unauthorized practice of law by giving legal advice and by rendering legal services in connection with marriage dissolutions and adoptions in the years 1976 and 1977. The bar specifically alleges that Furman performed legal services for at least seven customers by soliciting information from them and preparing pleadings in violation of Florida law. The bar further contends that through advertising in the *Jacksonville Journal*, a newspaper of general circulation, Furman held herself out to the public as having legal expertise in Florida family law and sold "do-it-yourself divorce kits." The bar does not contend that

Furman held herself out to be a lawyer, that her customers suffered any harm as a result of the services rendered, or that she has failed to perform the services for which she was paid.

In describing her activities, Furman states that she does not give legal advice, that she does prepare pleadings that meet the desires of her clients, that she charges no more than $50 for her services, and that her assistance to customers is in aid of their obtaining self-representative relief from the courts. In general, the respondent alleges as a defense that the ruling of this court in *Florida Bar v. Brumbaugh*, 355 So.2d 1186 (Fla. 1978), violates the first amendment to the United States Constitution by restricting her right to disseminate and the right of her customers to receive information which would allow indigent litigants access to the state's domestic relations courts. She alleges that our holding in *Brumbaugh* is so narrow that it deprives citizens who are indigent of equal protection of the laws as provided by the Florida and United States constitutions.

When this case was at issue, we referred it to retired Circuit Judge P. B. Revels of the Seventh Judicial Circuit, one of Florida's most experienced trial judges, to serve as referee. The referee has filed his report which, in pertinent part, indicates:

> A. That the Respondent, Rosemary W. Furman, d/b/a/ Northside Secretarial Service, is the sole proprietor and owner of said secretarial service. The Northside Secretarial Service has never registered under the fictitious name law.
>
> B. Respondent has never received any legal training or education; is not now nor ever been a licensed attorney of law of the State of Florida

> or elsewhere; that she is not now and never has been a member of The Florida Bar.
>
> * * *
>
> D. That the Respondent under the guise of secretarial services for a fee prepares all papers considered by her to be necessary for the filing and securing a dissolution of marriage, as well as detailed instructions as to how the papers should be filed, service secured, hearings set and a briefing session as to the questions and answers to be offered at the trial of the case before the Court and for entry of Final Judgment of Dissolution.
>
> E. The Respondent admitted, when a person comes to her place of business, they state they want to get a divorce or they want her to help them get a divorce, although many of the people deposed insisted that they only asked that she type papers to enable them to obtain the divorce. So after some discussion, the customer is provided with the appropriate intake sheet for the facts listed at the first visit – either Respondent's Exhibit 11 or 12. In addition to the intake sheet the Respondent furnishes papers outlining the legal steps, the law and the procedures, as shown by Respondent's Exhibits 13, 14 and 15, advising them to read the matter and it will help them in filling out the intake sheet.
>
> F. The Respondent admits that the customer returns with the intake sheet not completed, because the people are unfamiliar with the legal terms and some are illiterate and, of course, she then proceeds to ask questions to complete the

intake sheet for preparing the Petition for Dissolution of Marriage. Then after she types the Petition for Dissolution of Marriage, she advises the customer to take the papers for filing to the Office of the Clerk of Circuit Court, and Respondent follows the progress of the case every step of the way until it is at issue. She then notifies the customer to come in for a briefing session preferably the day before the date set for trial. In the course of briefing Respondent furnishes the customer with a diagram of the Court chambers and where to find the Judge to which that particular case has been assigned. A copy of the diagram of chambers that she furnishes to the customer is shown by Respondent's Exhibit 10. She also explains the full procedure that will take place before the Judge, including the questions the customer should ask the customer and the resident witness. A copy of same is shown by Respondent's Exhibit 20. The facts in the record of this case establish very clearly that the Respondent performs every essential step in the legal proceedings to obtain a dissolution of marriage, except taking the papers and filing them in the Clerk's office and going with the customer to the final hearing and interrogating the witness.

* * *

H. Respondent admitted that she could not follow the guidelines as set forth in the *Florida Bar vs Brumbaugh*, Supreme Court Opinion, for the reason that the customers who come to obtain her services are not capable for various and sundry reasons, mainly not being familiar with

legal terminology or illiterate, and were unable to write out the necessary information. Therefore, she was compelled to ask questions and hold conferences with her customers.

I. Pre-trial Stipulation, Joint Evidentiary Exhibit 1, briefly enumerates the factual situation in each of the cases which I believe I can state the substance of the Stipulation, even though there are some varying circumstances in each case, for the purpose of my findings without quoting the Stipulation in full. The cases involved were *Green vs Green, Ammons vs Ammons, Kirkby - Petition for Adoption, Howland vs Howland, Mayden vs Mayden, Holmes vs Holmes,* and *Touchton vs Touchton.* The substance of this Stipulation is as follows:

> The factual information contained in the pleadings was obtained by Respondent from the customer as a result of oral questions asked by Respondent and answered by the customer, which information was written upon Respondent's standardized intake sheet. Respondent by both oral and written instructions informed the customer as to the procedures to be followed in filing the pleadings and in processing the same to final hearing. Respondent specifically informed customers that she was not an attorney nor licensed to practice law in the State of Florida and at no time did the customers believe that the Respondent was an attorney or licensed to practice law. In paragraphs 16 and 17

> of said stipulation the parties agreed that the customers did not think or know that they had suffered any damage as a result of Respondent's services; that they did not think that the Respondent gave them legal advice or engaged in legal counseling.

The referee made the following findings:

1. The foregoing facts show by a great weight of the evidence, Rosemary W. Furman, shielded behind the cloak of Northside Secretarial Service, has been engaged in the unauthorized practice of law for approximately three years.

2. That the Opinion in *Florida Bar vs Brumbaugh* is being interpreted by many as a license to individuals, who are trained and experienced in secretarial work, to practice law. This creates a grave danger to the citizens of Florida.

* * *

11. Rosemary W. Furman should be adjudged guilty of contempt of the Supreme Court of Florida, and permanently enjoined from engaging or pursuing any course of action personally or in her secretarial service that touches or resembles in any way the practice of law. She should be prohibited from typing legal papers of any kind, filling blanks on any legal forms, or giving oral or written advice or directions. The fact she is an expert stenographer does not give her any legal right to engage in divorce and adoption practice anymore than a nurse has the right to set up an office for performing tonsillectomy or appendectomy operations or a dental assistant to do extractions or fill teeth.

The referee's findings must be approved unless they are erroneous or wholly lacking in evidentiary support. *Florida Bar v. Wagner,* 212 So.2d 770 (Fla. 1968).

We do not write on a clean slate in this case. Last year we took the opportunity to clearly define to non-lawyers the proper realm in which they could operate without engaging in the unauthorized practice of law. In *Brumbaugh,* we clearly stated what services a similar secretarial business could lawfully perform. We said:

> We hold that Ms. Brumbaugh, and others in similar situations, may sell printed material purporting to explain legal practice and procedure to the public in general and she may sell sample legal forms. To this extent we limit our prior holding in *Stupica* and *American Legal and Business Forms, Inc.* Further, we hold that it is not improper for Marilyn Brumbaugh to engage in a secretarial service, typing such forms for her clients, provided that she only copy the information given to her in writing by her clients. In addition, Ms. Brumbaugh may advertise her business activities of providing secretarial and notary services and selling legal forms and general printed information. However, Marilyn Brumbaugh must not, in conjunction with her business, engage in advising clients as to the various remedies available to them, or otherwise assist them in preparing those forms necessary for a dissolution proceeding. More specifically, Marilyn Brumbaugh may not make inquiries nor answer questions from her clients as to the particular forms which might be necessary, how best to fill out such forms, where to properly file such forms, and how to present necessary evidence at the court hearings. Our specific holding with regard to the

> dissolution of marriage also applies to other unauthorized legal assistance such as the preparation of wills or real estate transaction documents. While Marilyn Brumbaugh may legally sell forms in these areas, and type up instruments which have been completed by clients, she must not engage in personal legal assistance in conjunction with her business activities, including the correction of errors and omissions.

355 So.2d at 1194.

Our directions could not have been clearer.

Before the referee and before this court, Furman admitted that she did not abide by the dictates of *Brumbaugh*. She says that it is impossible for her to operate her "do-it-yourself divorce kit" business in compliance with this court's ruling in that case. The bar alleges that Furman has engaged in the unauthorized practice of law as previously defined by this court. The referee so found. She so admits. We believe the referee's findings are supported by the evidence.

In other portions of the referee's report, he urges that as part of our disposition in this case we require the bar to conduct a study to determine how to provide effective legal services to the indigent. Without question, it is our responsibility to promote the full availability of legal services. We deem it more appropriate, however, to address this issue in a separate proceeding. By doing so under our supervisory power, we insure a thorough consideration of the overall problem without delaying the present adjudication.

Devising means for providing effective legal services to the indigent and poor is a continuing problem. The Florida Bar has addressed this subject with some success. In spite of the

laudable efforts by the bar, however, this record suggests that even more attention needs to be given to this subject.

Therefore, we direct The Florida Bar to begin immediately a study to determine better ways and means of providing legal services to the indigent. We further direct that a report on the findings and conclusions from this study be prepared and filed with this court on or before January 1, 1980, at which time we will examine the problem and consider solutions.

Accordingly, Rosemary Furman, d/b/a/ Northside Secretarial Service, is declared to be in contempt of this court and is hereby permanently enjoined from the further unauthorized practice of law. The parties shall have 30 days to submit briefs on the appropriateness of punishment in this case. Thereafter, such punishment, if any, shall be determined by separate order of this court.

It is so ordered.

ENGLAND, C.J., ADKINS, BOYD, OVERTON, SUNDBERG, HATCHETT and ALDERMAN, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Case of original Jurisdiction – The Florida Bar

Bernard H. Dempsey, Jr., Chairman, Standing Committee on Unauthorized Practice of Law, Orlando, Florida; Lacy Mahon, Jr., Bar Counsel, Jacksonville, Florida; and H. Glenn Boggs and John A. Weiss, Assistant Staff Counsels, Tallahassee, Florida,

for Petitioner

Albert J. Hadeed, Southern Legal Counsel, Inc., Gainesville, Florida; and Alan B. Morrison, pro hac vice, Washington, D.C.,

for Respondent

William H. Adams III, Jacksonville, Florida,

for Amicus Curiae

Supreme Court of Florida

No. 51,226

THE FLORIDA BAR, Petitioner,

v.

ROSEMARY W. FURMAN, d/b/a
NORTHSIDE SECRETARIAL SERVICE,
Respondent.

[November 1, 1979]

ORDER

The respondent having filed her motion for rehearing and clarification of this Court's opinion filed May 10, 1979, and upon consideration thereof the motion is granted to the extent that the opinion is revised by:

1. Striking the original paragraph therein and substituting therefor the following:

> The Florida Bar has petitioned this Court to enjoin Rosemary W. Furman, d/b/a Northside Secretarial Service, from unauthorized practice of law in the State of Florida. Our jurisdiction to rule in this matter is provided by article V, section 15 of the Florida Constitution and by The Florida Bar Integration Rule, article XVI. We find the activities of the respondent to constitute the practice of law and permanently enjoin her from the further unauthorized practice of law.

2. Striking the penultimate paragraph therein and substituting therefor the following:

Accordingly, we find that Rosemary Furman, d/b/a Northside Secretarial Service, has been guilty of the unauthorized practice of law by virtue of the activities recited herein and she is hereby permanently enjoined and restrained from further engaging in the unauthorized practice of law in the State of Florida.

It is so ordered.

ENGLAND, C.J., ADKINS, BOYD, OVERTON and SUNDBERG, JJ., Concur
ALDERMAN, J., Concurs in part and dissents in part with an opinion

ALDERMAN, J., Concurring in part, dissenting in part.

I concur in the revision of the original opinion, but I would also tax the costs of this proceeding against the respondent, Rosemary W. Furman.

The Florida Bar properly brought to the attention of this Court the respondent's unlawful activity. As a result, the respondent has been found guilty of the unauthorized practice of law. There has been no wrongdoing on the part of the Bar. The culprit in this case is Rosemary W. Furman. If she had not violated the law, it would not have been necessary for The Florida Bar to bring this action. The respondent is the guilty party, and she is the one who should pay the costs that were necessarily incurred by The Florida Bar to stop her illegal activity.

A True Copy JB

TEST:

/s/ Sid J. White

Sid J. White
Clerk Supreme Court.

cc: Bernard H. Dempsey, Jr., Chairman
Standing Committee on Unauthorized Practice of Law,
Orlando, Fla.

Lacy Mahon, Jr., Bar Counsel,
Jacksonville, Fla.

H. Glenn Boggs and John A. Weiss,
Assistant Staff Counsels,
Tallahassee, Fla.
Counsel for Petitioner

Albert J. Hadeed, Esquire
Southern Legal Counsel, Inc.,
Gainesville, Fla.

Alan B. Morrison, Esquire
Washington, D.C.

Counsel for Respondent

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR, Petitioner, vs. ROSEMARY FURMAN, d/b/a Northside Secretarial Service, Respondent.	)	CASE NO. 51,226

RESPONDENT'S MOTION FOR REHEARING AND CLARIFICATION OF, AND BRIEF IN RESPONSE TO, THE COURT'S OPINION OF MAY 10, 1979

Respondent moves the Court for rehearing and clarification pursuant to Rule 9.330, Fla.R.App.P., and files her brief on the appropriateness of punishment in response to the Court's decision of May 10, 1979, as follows:

Rehearing on Contempt Finding

(1) In its per curiam opinion of May 10, 1979, the Court permanently enjoined Respondent from the further unauthorized practice of law and declared her to be "in contempt of this court. . . ." The parties were directed to submit briefs "on the appropriateness of punishment" to be determined by subsequent order. Slip op. at 6.

(2) The declaration of contempt, with the prospect of punishment, is a fundamental error which should be stricken from the Court's opinion.

(3) At no time during these proceedings was Respondent appraised that she would be required to stand ready to answer a charge of criminal contempt.

(4) The Petitioner, the Florida Bar, sought only a civil injunction under the Florida Bar Integration Rule, article XVI, §IIIA, and did not elect to seek indirect criminal contempt, *id.* §IIIB. See Bar's Amended Petition at 9–10, dated Sept. 23, 1977. See also the conclusion of the Bar's principal brief at 23, dated Dec. 21, 1978, and responsive brief at 12, dated Jan. 25, 1979.

(5) The Court's rule to show cause, dated March 14, 1977, directed Respondent only to show cause why she "should not be enjoined from the unauthorized practice of law in the State of Florida."

(6) Although not requested to do so, the Referee recommended to this Court, *inter alia,* that Respondent be "adjudged guilty of contempt of the Supreme Court of Florida. . . ." Report of Referee at 62, ¶ 11, dated Aug. 17, 1978.

(7) The Respondent objected to the Referee's recommendation of contempt in her principal brief dated November 21, 1978, at 11 n.6. The briefs filed by the Bar were silent on this issue.

(8) Although the Court did not characterize its contempt finding as civil or criminal, the contempt appears to be criminal because it will impose punishment upon Respondent for conduct allegedly offensive to the public in violation of the Court's rule against the unauthorized practice of law. *See Pugliese v. Pugliese,* 347 So.2d 422, 424 (Fla. 1977). Additionally, unlike civil contempt orders, the Court's opinion apparently does not contemplate including

a provision allowing Respondent to purge herself of the contempt. *Id.* at 424, 425, 426.

(9) The lack of notice to Respondent that she was subject to criminal contempt and the lack of compliance with the other procedural protections afforded by the Florida Bar Integration Rule, article XVI, §IIIB,[1] require that the contempt finding and the reference to punishment contained in the Court's opinion of May 10, 1979, be stricken. *See Pugliese v. Pugliese,* 347 So.2d at 426. *Accord Carter v. Easterling,* 362 So.2d 356, 357 (Fla. 1st DCA 1978); *Vines v. Vines,* 357 So.2d 243, 245-247 (Fla. 2nd DCA 1978); *Deter v. Deter,* 353 So.2d 614, 617-618 (Fla. 4th DCA 1977); *Adirim v. City of Miami,* 348 So.2d 1226, 1227-1228 (Fla. 3rd DCA 1977).

(10) The Court's contempt finding is also violative of the due process clause of the Fourteenth Amendment to the United States Constitution because of the lack of any fair warning that Respondent was subject to criminal contempt and punishment, see, e.g., *Bouie v. City of Columbia,* 378 U.S. 347, 355 (1964), and further, because the state has failed to follow its procedures for adjudging contempt and imposing punishment, see, e.g., *U.S. ex rel. Accardi v. Shaughnessy,* 347 U.S. 260, 268 (1954).

---

[1] The indirect criminal contempt provisions require that the Bar's petition be sworn and that it notify the respondent that the relief sought is contempt. Fla. Bar Integr. Rule, art. XVI, §IIIB(1)(a). A respondent also possesses the right to appointed counsel if insolvent and the right to bail if arrested. *Id.* §IIIB(1)(b), (1)(f). No respondent may be compelled to testify, and proof of guilt must be beyond a reasonable doubt. *Id.* §IIIB(1)(g).

These procedural protections of the Integration Rule parallel those of Rule 3.840, Fla.R.Crim.P.

Brief on the Appropriateness of Punishment

(11) The Court's May 10, 1979 order directed the parties to submit briefs on the appropriateness of punishment within thirty (30) days. Because it is unclear whether a motion for rehearing would toll the time for filing the briefs requested by the Court, and for reasons of practicality, Respondent submits her argument on that question here rather than by a separate brief.

(12) In addition to the procedural flaws recited above, punishment of any kind is singularly inappropriate in this case.

(13) This action was not instituted on the complaint of Respondent's clients, and no harm was shown by the Bar to have been caused by Respondent's services. Respondent clearly disclosed to her clients that she was not an attorney, and no client believed her to be one.

(14) Respondent proceeded in good faith, initially on her own and then on the advice of counsel that the Court's then existing rule against the unauthorized practice of law as articulated in *The Florida v. Stupica,* 300 So.2d 683 (Fla. 1974), and *The Florida Bar v. American Legal & Bus. Forms,* 274 So.2d 225 (Fla. 1973), was unconstitutional. See answer at 5-7, dated Nov. 14, 1977, and Amended Answer at 5-8, dated Feb. 23, 1978.

(15) During the pendency of this action, the Court decided *The Florida Bar v. Brumbaugh,* 355 So.2d 1186 (1978), which substantially modified the prior rule. In response to the Court's *Brumbaugh* decision, Respondent tendered an offer of judgment to the Bar stating her willingness to comply with *Brumbaugh,* but the Bar declined the offer. See Respondent's Reply Brief at 4-7, dated Jan. 8, 1979.

(16) Notwithstanding the refusal of the Bar to accept her offer, Respondent modified her practices to conform with *Brumbaugh*, reducing all her instructions to writing and requiring clients to complete intake forms in their own hand. See Respondent's principal brief at 24–27, dated Nov. 21, 1978.

(17) Only after Respondent later concluded that the *Brumbaugh* decision was too restrictive did she challenge *Brumbaugh* on public policy and constitutional grounds. See Respondent's principal brief at 25–30, dated Nov. 21, 1978 1978.

(18) Throughout these proceedings Respondent has fully disclosed her practices. *Compare* Amended Answer at 1–5, dated Feb. 23, 1978, *with* Pre-trial Stipulation at 2–7, dated July 17, 1978, and *with* Report of Referee at 2–5, dated Aug. 17, 1978. Indeed, the depositions taken by the Bar of Respondent's clients were totally unnecessary. See Transcript of Evidentiary Hearing at 26–133, dated July 18, 1978 (testimony of Respondent) and Petitioner's Ex. 9, dated July 14, 1978 (deposition of Respondent). Finally, in the words of this Court, "[i]t is questionable that [Respondent] would have taken the stand and testified unabashedly. . . had [she] known that criminal penalties were involved." *Pugliese v. Pugliese*, 347 So.2d at 426.

(19) Accordingly, equity demands that Respondent not be punished for a good faith challenge to restrictions alleged to be in violation of public policy and fundamental constitutional rights, particularly in light of the uncertainty of the meaning of *Brumbaugh*, see paragraphs 25–32, *infra*.

Rehearing on the Fourteenth Amendment Claim

(20) Respondent also moves for a rehearing of the Court's May 10, 1979 decision to the extent that it forecloses Respondent from assisting those individuals unable to afford an attorney or obtain legal aid to effectuate their federal constitutional right to domestic relations relief.

(21) This Court affirmed the Referee's finding that many citizens are unable to obtain divorces and adoptions because of their inability to secure the services of an attorney. The Court directed the Bar to submit a report no later than January 1, 1980, suggesting better ways of providing effective assistance to the indigent and poor. Slip op. at 6.

(22) Until such time as there is in place a program which guarantees that all citizens, regardless of wealth, have meaningful access to the state's domestic relations courts, Respondent possesses a federal due process right based upon *Boddie v. Connecticut*, 401 U.S. 371 (1971), to offer assistance to those citizens who would otherwise be unable to obtain domestic relations relief. See Respondent's principal brief at 36–49, dated Nov. 21, 1978.

(23) Therefore, the Court should modify its order so as to allow Respondent to explain standardized forms and procedures to her indigent clients, to answer their questions as to these forms and procedures, and to correct their errors and omissions, until such time as effective solutions to the access problem are firmly in place.

Clarification of Brumbaugh Injunction

(24) The Court's May 10, 1979 decision reaffirms *Brumbaugh* and applies its restrictions to the Respondent. Respondent realizes that the Court rejected her public policy argu-

ments favoring a liberalization of *Brumbaugh*, but she continues to be unsure of how *Brumbaugh* applies to her secretarial service. Clarification of the Court's May 10, 1979 opinion is particularly important since Respondent will be subject to criminal contempt penalties for any future violation of the Court's order.

(25) In *Brumbaugh* this Court stated that it was not improper for Ms. Brumbaugh to type forms for her clients provided that "she only copy the information given to her in writing by her clients." 355 So.2d at 1194.

(26) Since the *Brumbaugh* decision, Respondent has utilized an intake sheet which is not framed as a pleading but solicits in a question and answer format the information normally incorporated in standardized pleadings. See Respondent's Ex. 12, appended to her principal brief at App. 15. Respondent has her clients complete the intake form themselves and thereafter types the necessary pleadings based upon the information supplied by the client. Thus, Respondent's current intake process appears to comply with the literal terms of *Brumbaugh*. The Bar, however, contends that this process is violative of *Brumbaugh*. See Bar's principal brief at 10–11, dated Dec. 21, 1978.

(27) The Referee's Report does not shed any light on the propriety of Respondent's intake process when measured against *Brumbaugh* since his recommended injunction was more restrictive than that ordered in *Brumbaugh*.[2]

---

[2]The Referee recommended: "She should be prohibited from typing legal papers of any kind, filling blanks on any legal forms, or giving oral or written advice or directions." Report at 62, ¶11, dated Aug. 17, 1978.

(28) Likewise, the Court's decision does not resolve the dispute between the parties.

(29) The need for clarification of *Brumbaugh* is not confined to Respondent alone. Indeed, in its petition for rehearing of the *Brumbaugh* decision, the Bar stated that "the limits within which the respondent [Ms. Brumbaugh] and others similarly situated [Ms. Furman] may operate their businesses are ambiguous and uncertain." Petition for Rehearing at 1, ¶2, dated Jan. 24, 1978. The Bar went on to state:

> The petitioner [the Florida Bar] alleges that uncertainty exists as to whether the respondent may communicate with a client when the client asks to buy legal forms or printed instructions, and how that communication, if any, is permitted to be carried on. May the respondent state what legal forms she has available to sell without indicating which one the client should buy? May the respondent state that certain forms are for dissolutions with children and other forms are for without children? May the respondent make any comment whatsoever about the variety of or otherwise identify the different legal forms and instructions that she has to sell when the client inquires about solving a legal problem?

Id. at 2, ¶2.

(30) These questions are also relevant here. Presently Respondent translates the relief requested by her clients on her intake form into standardized pleadings necessary to effectuate that relief. Since she only incorporates the relief that is specifically requested by the client, she exer-

cises no discretion and provides no legal advice. The Bar, however, disagrees, and the Court's decision of May 10, 1979 offers no definitive answer.

(31) Another dispute between the parties concerns whether Respondent may orally supplement her procedural instructions and answer client questions which relate to such matters of general knowledge as the location of the clerk's office, the manner of paying fees and filing papers, the method of obtaining a final hearing date, the physical layout of the judge's chambers, and the manner in which the client should approach the judge at a final hearing. Respondent currently provides such information[3] and wishes to continue to do so.

(32) However, the Bar contends that providing this information constitutes the giving of legal advice, see, e.g., Bar's Ans. to Interrog. No. 32, dated Dec. 13, 1977. The Court's decision provides no guidance to the parties on whether Respondent may continue to communicate this information orally as a supplement to her written instructions and to answer the specific questions of her clients.

WHEREFORE, Respondent moves the Court to:

(a) Strike its contempt finding and reference to punishment in its May 10, 1979 order;

(b) Declare that punishment is not appropriate;

(c) Rehear and modify its May 10, 1979 order to the extent that it precludes the Respondent from meaningfully assisting indigents seeking domestic relations relief; and

---

[3] The content of these instructions was excerpted from Respondent's testimony and appended to Respondent's principal brief at App. 5-14.

(d) Clarify its May 10, 1979 order so that the parties will know definitively whether Respondent's intake process and oral supplementation of written procedural instructions complies with *Brumbaugh*.

Dated this 24th day of May, 1979.

Respectfully Submitted,

ALBERT J. HADEED
Southern Legal Counsel, Inc.
115-A N.E. 7th Avenue
Gainesville, Florida 32601
(904) 377-8288

ALAN B. MORRISON
2000 "P" Street, N.W.
Suite 700
Washington, D.C. 20036
(202) 785-3704

By /s/
Albert J. Hadeed
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served upon H. Glenn Boggs, Assistant Staff Counsel, The Florida Bar, Tallahassee, Florida 32304, Bernard H. Dempsey, 610 Eola Office Center, 605 East Robinson Street, Orlando, Florida 32801, Lacy Mahon, Jr., 350 East Adams Street, Jacksonville, Florida 32202, and William H. Adams, 100 Laura Street, Jacksonville, Florida 32201, by United States mail this 24th day of May, 1979.

_____

Attorney

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Petitioner,

-vs- Case No. 51,266

ROSEMARY W. FURMAN, d/b/a
Northside Secretarial Service,
Respondent.

REPORT OF REFEREE

I respectfully report to the Supreme Court of Florida the following proceeding had before me (Referee) by authority of the Order of the Supreme Court of Florida appointing the undersigned as Referee on August 1, 1977, to proceed in the premises and report his findings to the Supreme Court. Lacy Mahon, Jr. and H. Glenn Boggs appeared for the Petitioner and Albert J. Hadeed and Allen B. Morrison appeared for the Respondent. Heretofore, the pleadings have been settled, the discovery completed and on July 18, 1978, the testimony commenced and having been taken and other matters received and admitted into evidence in this cause and having been completed and the same having been reviewed and considered, and, being advised in the premises the Referee hereby submits the following:

1. This cause was properly brought before this Referee pursuant to the applicable provisions of the Florida Constitution and the Intergrated Rules of the Florida Bar.

A. That the Respondent, Rosemary W. Furman, d/b/a Northside Secretarial Service, is the sole proprietor and owner of said secretarial service. The Northside Secretarial Service has never registered under the fictitious name law.

B. Respondent has never received any legal training or education; is not now nor ever been a licensed attorney of law of the State of Florida or elsewhere; that she is not now and never has been a member of the Florida Bar.

C. That said Respondent is sui juris and was at all times pertinent hereto a resident of Duval County, Florida.

D. That the Respondent under the guise of secretarial services for a fee prepares all papers considered by her to be necessary for the filing and securing a dissolution of marriage, as well as detailed instructions as to how the papers should be filed, service secured, hearings set and a briefing session as to the questions and answers to be offered at the trial of the case before the Court and for entry of Final Judgment of Dissolution.

E. The Respondent admitted, when a person comes to her place of business, they state they want to get a divorce or they want her to help them get a divorce, although many of the people deposed insisted that they only asked that she type papers to enable them to obtain the divorce. So after some discussion, the customer is provided with the appropriate intake sheet for the facts listed at the first visit – either Respondent's Exhibit 11 or 12. In addition to the intake sheet the Respondent furnishes papers outlining the legal steps, the law and the procedures, as shown by Respondent's Exhibits 13, 14 and 15, advising them to read the matter and it will help them in filling out the intake sheet.

F. The Respondent admits that the customer returns with the intake sheet not completed, because the people are unfamiliar with the legal terms and some are illiterate and, of course, she then proceeds to ask questions to complete the intake sheet for preparing the Petition for Dissolu-

tion of Marriage. Then after she types the Petition for Dissolution of Marriage, she advises the customer to take the papers for filing to the Office of the Clerk of Circuit Court, and Respondent follows the progress of the case every step of the way until it is at issue. She then notifies the customer to come in for a briefing session preferably the day before the date set for trial. In the course of briefing Respondent furnishes the customer with a diagram of the Court chambers and where to find the Judge to which that particular case has been assigned. A copy of the diagram of chambers that she furnishes to the customer is shown by Respondent's Exhibit 10. She also explains the full procedure that will take place before the Judge, including the questions the customer should ask the customer and the resident witness. A copy of same is shown by Respondent's Exhibit 20. The facts in the record of this case establish very clearly that the Respondent performs every essential step in the legal proceedings to obtain a dissolution of marriage, except taking the papers and filing them in the Clerk's office and going with the customer to the final hearing and interrogating the witness.

G. Respondent's standard fee for her services is Fifty Dollars ($50.00), but she has performed this service for a few customers for Twenty-Five Dollars ($25.00) and claimed that a few were gratis, but other than her statement there is nothing in the record to substantiate performing services gratis, because she claims that she did not keep any of the records and could not remember to whom such services were performed.

H. Respondent admitted that she could not follow the guidelines as set forth in the *Florida Bar vs Brumbaugh*, Supreme Court Opinion, for the reason that the customers who come to obtain her services are not capable for various and sundry reasons, mainly not being familiar with legal ter-

minology or illiterate, and were unable to write out the necessary information. Therefore, she was compelled to ask questions and hold conferences with her customers.

I. Pre-trial Stipulation, Joint Evidentiary Exhibit 1, briefly enumerates the factual situation in each of the cases which I believe I can state the substance of the Stipulation, even though there are some varying circustances in each case, for the purpose of my findings without quoting the Stipulation in full. The cases involved were *Green v. Green, Ammons vs Ammons, Kirby - Petition for Adoption, Howland vs Howland, Mayden vs Mayden, Holmes vs Holmes,* and *Touchton v. Touchton*. The substance of this Stipulation is as follows:

> The factual information contained in the pleadings was obtained by Respondent from the customer as a result of oral questions asked by Respondent and answered by the customer, which information was written upon Respondent's standardized intake sheet. Respondent by both oral and written instructions informed the customer as to the procedures to be followed in filing the pleadings and in processing the same to final hearing. Respondent specifically informed customers that she was not an attorney nor licensed to practice law in the State of Florida and at no time did the customers believe that the Respondent was an attorney or licensed to practice law. In paragraphs 16 and 17 of said stipulation the parties agreed that the customers did not think or know that they had suffered any damage as a result of Respondent's services; that they did not think that the Respondent gave them legal advice or engaged in legal counseling.

2. Subparagraph I herein taken from the Joint Stipulation probably is sufficient to show that the Respondent was engaged in the unauthorized practice of law under the disguise of operating a secretarial service, but I have attempted to gleen from the depositions and testimony direct quotes that touch directly upon the issue, as follows:

A. In the case of *Green v. Green*, Petitioner's Exhibit 2, Joyce Green Shelton testified as follows:

Page 9

BY MR. MAHON

"Q You asked her would she help you get a divorce and she said yes?

A Yes."

Q And then she asked you questions and you gave her the answers and she wrote it down, is that the way it went?

A She asked me questions, she told me I would have to put them in my own words, she couldn't do it for me, so she asked me questions and I'd tell her these things right here (indicating).

Page 10

BY MR. MAHON

"Q What is this irretrievably broken, did you give her that word?

A No, I didn't.

– –

– –

Q And that was what your, well, did she ask you was the marriage irretrievably broken or did you come up and use that word yourself?

A No, I didn't use the word

Q In other words, this is her wording that's put in there, is that correct, from what you told her?

A Yes."

Page 25

BY MR. MAHON

"Q Who sent you papers in the mail?

A Whatever the date, you know, the date that I was supposed to have went to court for my divorce. I'm trying, I don't know if it say it on there where to go or if Ms. Furman told me, I'm not sure.

Q Who mailed you papers, Ms. Furman?

A (Witness nodded.)"

Page 26

BY MR. MAHON

"Q What folder did you take?

A I had a folder with my papers in it.

Q Who gave you the folder?

A And it probably was these papers.

Q Who gave you the papers?

A Ms. Furman did.

O When did she give you those?

A Let's see, I think it was the same day."

Q You came back later on and she had all of the rest of the papers prepared for you, is that correct?

A Uh-huh.

Q And did she tell you what to do with them?

A Yeah, she told me, yes, uh-huh.

Q What did she tell you to do with them?

A Well, to take them to court, you know."

Page 27

BY MR. MAHON

"Q How did you know to take the Dissolution of Marriage paper there?

A Ms. Furman told me.

—

—

Q Did she tell you to have them filed?

A I think she told me to have them filed there."

Page 28

BY MR. MAHON

"Q You didn't know you were supposed to do that yourself, did you, Mrs. Green? You wouldn't have known that not being a lawyer, would you?

A No, I wouldn't have known.

—

—

Q How did you know what day you were supposed to go in front of the judge?

A Let's see, when I had – I'm trying to think."

Page 29

BY MR. MAHON

"Q Who finally told you what day?

A I don't remember, I really don't

Q You don't know how you happened to get down there at all?

A What you mean, happened to get down to–

Q To the Courthouse to get the divorce and to –

A Ms. Furman gave me my papers and she told me where to take them, I'm sure, and after I had gotten there and gave these papers to the lady, I asked her where do I go, then what to do and she told me.

Q How did you know you needed to take somebody with you?

A Because, after I – let me see now, I think after I saw, I don't know if this was the judge's secretary who told me – well, Ms. Furman told me I had to bring somebody with me."

Page 30

BY MR. MAHON

"Q Ms. Furman told you you would have to have a witness as to your residence here?

A Uh-huh, somebody who, you know, had been knowing me."

Page 31

BY MR. MAHON

"Q Mrs. Furman told you you would have to have a witness, did you know what that meant?

A Yeah, I knew what it meant, uh-huh."

B. In the case of *Ammons vs Ammons*, Petitioner's Exhibit 3, Donald Ray Ammons testified as follows:

Page 24

BY MR. FARLEY

"Q Do you recognize those?

A Uh-huh, yeah.

Q Is that the document that Ms. Furman typed up?

A Yeah, I think it's one. I think this is what's on that tissue paper, that thing, you know, I think.

Q This being the first page of a petition for dissolution of marriage?

A This is? Is this it?

Q This.

A Yeah, what about it?

Q You say–

A Is this the first page, yeah, yeah, that's the first page."

Page 25

BY MR. FARLEY

"Q You signed the second page, is that right?

A Yeah, looks like – that's mine, uh-huh.

Q And did you also sign this third –

A Yeah.

BY MR. FARLEY

Q – page which is titled Sworn Statement for Constructive Service of Process?

A Uh-huh.

Q That's your signature?

A Yeah.

Q I think we can just show that it's Case No. 77-501-CA, and marked Exhibit C."

C. In the case of *Ammons vs Ammons,* Petitioner's Exhibit 3, Gladys Patricia Ammons testified as follows:

Page 32

BY MR. FARLEY

"Q Do you know what to put in a petition for dissolution of marriage?

A Uh-huh, don't you?

Q Do you?

A Know what to put, are you talking about getting a divorce?

Q Yes

A Near about, yeah.

Q What?

A That, what my husband has done to me, what I want, this and that.

Q What you want?

A Yes

Q You didn't tell her what to type, did you?

A No, huh-uh. Well, I told her what I wanted, I didn't tell her word for word, no, huh-uh."

D. In the Kirkby adoption case, Petitioner's Exhibit 3, William Stewart Kirkby testified as follows:

Page 37

BY MR. MAHON

"Q The first time you went there, did you go alone or did you go with your wife?

A No, I went with my wife.

Q Would you tell me what happened when you went there, sir?

A Well, as near as I can recollect, she asked us for

information as far as, you know, the birth certificate and, you know, just general information as far as my name, my wife's name, the reason for the adoption.

Q You're not a lawyer?

A No, sir.

Q Did you have any legal advice from a lawyer with regard to the adoption?

A No, sir.

Q Did you know how you adopted a child?

A No, sir, I was not familiar with that.

Q Did you know that there had to be a Petition when you went to Mrs. Furman?

A No, sir."

Page 38

BY MR. MAHON

"Q Did you know what was necessary to put in a Petition to adopt a child?

A No, sir.

—

—

Q Did you do anything about consenting or anything such as that?

A No, sir.

Q Here is a paper which is entitled a Petition for Adoption, it's two pages, excuse me, I say a paper, it's a document and it bears your signature on the second page, does it, sir?

A Yes, sir.

Q May I ask you where did you sign that, sir?

A I signed that at Mrs. Furman's.

Q All right, sir. And the information, who typed it, sir, do you know?
A I – that I couldn't tell you, sir. I have no idea who typed it, you know, I didn't see anybody type it so that I would have to say that I don't know."

Page 39

BY MR MAHON

"Q Did she ask you how old you were and such questions as that?
A Yes, sir.
Q Did you know it was necessary to put in a Petition for Adoption your age and where you worked and different kinds of things like that?
A No, sir, I did not.
Q Then you gave her the information in answer to the questions that she asked and then what happened, did she then type it up or did you go back and get it or what happened?
A I just gave her the information and we returned a second time to pick up all the papers.
Q And what did you do with them when you picked them all up?
A We went to court with them.
Q How did you know where to go?
A We were told where to go.
Q Who told you?
A Ms. Furman."

Page 42

BY MR. MAHON

"Q – Did you furnish anything, a copy of the birth certificate?

A Yes, sir.
Q Who did you give that to?
A Ms. Furman.
Q How did you know you needed that?
A Well, she asked for a copy of the birth certificate."

Page 43

BY MR. MAHON

"Q Did Mrs. Furman ask you where you worked and what you were doing, how much you were making?
A Yes, sir.
Q And in other words, would it be correct to say, Mr. Kirkby, you had no consent or knowledge of what would go into a Petition for Adoption when you went there?
A No, sir, I did not, no.
Q And the only thing you did was, the questions Mrs. Furman asked you, you answered them?
A Yes, sir."

E. In the Kirkby adoption case, Petitioner's Exhibit 3, Marsha Lynn Kirkby testified as follows:

Page 54

BY MR MAHON

"Q After you went to the court?
A Uh-huh, because we needed another paper.
Q What kind of paper was it that you needed, do you know?
A Huh-uh.
Q And did the judge tell you that when you went in front of him?
A Uh-huh, that we needed a paper for him to sign and if we could go get the paper that day, bring

it back up there and he would sign it, sign it right then and there and it would be over with.

Q Was that a Final Judgment for Adoption, the paper to really authorize the adoption by the judge?

A Right.

Q Where did you go then?

A Back to her office.

Q Did she then prepare it for you?

A Yes, sir.

Q Did you tell her what the judge had said and what you needed?

A Yes, sir.

Q And she went ahead and drew a Final Judgment?

A Right."

Page 55

BY MR. MAHON

"Q Had she agreed to provide that for you or how did you know to go back to her?

A My ex-husband said that she had the paper there, that she would type it up for us when we got back.

Q Said that she had it there?

A Uh-huh, that they didn't think we had needed that type of paper.

Q Your husband said that he had told her that he didn't think he would need that type of paper? Yeah, because it was – yeah.

Q All right. Did you pay Mrs. Furman anything?

A No, I didn't pay her nothing."

F. In the case of *Howland vs Howland*, Petitioner's Exhibit 3, Henry Martin Howland testified as follows:

Page 69

BY MR. MAHON

"Q Did you know what the proper information was to go in there?

A No.

Q So then what did you do?

A I went to a secretarial service.

Q Is that Mrs. Furman?

A Mrs. Furman, and told her that I needed to – that that I had heard that she could type up the legal papers in order for me to take down to the Courthouse and submit to them.

Q So then what happened then?

A So I was asked – well, she said that I could receive these papers from her, that she could type them up and that I would need to just give her a certain amount of information that she would need to type on the papers.

Q Did she ask you you all's names?

A Names, addresses, so on.

Q Did she ask you how long you had been married and where you got married?

A Yes.

Q Did she ask you how long you had been a resident of the State of Florida?

A Yes."

Page 70

BY MR. MAHON

"Q Did she ask you why you wanted to get a divorce?

A Well, she needed to know the reason why in order to put it on the form that she was going to type up.

Q Well, did she ask you if the marriage was irretrievably broken, have you ever heard of that before?

A Yes, sir.

Q Did she ask you if that was the case?

A Yes. –"

Page 71

BY MR. MAHON

"Q Have you ever heard of an Answer and a Waiver?

A Answer and a Waiver?

Q Have you ever heard that word before?

A No, sir, I have heard the words but not in that phrase.

Q Did she tell you you needed to have an Answer and Waiver?

A What is an Answer and Waiver?

Q Something to be signed by your wife.

A Right. Well, she had to have something signed in front of a notary and I took the form to her and she had to sign it in front of a notary.

Q Did Mrs. Furman prepare it for you there at the same time?

A Well, what I'm speaking of is the same thing that I submitted to the Courthouse. Now there was some papers that I kept and there was papers she kept."

Page 72

BY MR. MAHON

"Q And then after you gave this information, after Mrs. Furman asked you the question and gave you the papers, what did you do then?

A After she gave me the papers, what did I do?

Q Yeah, did you get your wife to sign?

A I got her to sign it. After she signed it, I took it down to the Courthouse.

Q How did you know where to take it?

A She informed me which room I needed to take it to."

Page 73

BY MR. MAHON

"Q Mrs. Furman?

A Mrs. Furman.

Q Did she tell you you'd have to pay to file it?

A She explained to me the process involved in taking it down to the Courthouse and what they would ask me and what the fees would be and so on.

Q And with this information you did that?

A I did."

Page 75

BY MR. MAHON

"Q All the papers you had there you got from Mrs. Furman, you didn't draw that?

A None at all.

Q If there was a Final Judgment that was presented to the judge, that came from Mrs. Furman?

A Anything that was presented to the judge came from Mrs. Furman.

Q The net effect is you had no idea of the procedure?

A Well, she –"

–

–

Q You didn't know what you were supposed to file to get a divorce?

A I didn't know the legal procedures or any of that.

Q Or what kind of paper you were supposed to draw up or what was supposed to go in them when you went there?

A No, sir, I was told there was a kit I could receive from her, a divorce type kit."

Page 76

BY MR. MAHON

"Q And she asked you the questions and filled in the information you gave and told you where to take it and you did it and got the divorce, correct?

A Correct.

Q How much did you pay, sir?

A Pay who?

Q Mrs. Furman.

A $50."

Page 77

BY MR. MAHON

"Q Did you yourself, did you want to represent yourself in this action, in your divorce action, is that what you wanted to do?

A That was the way I wanted, yes, I wanted to and I was shown on some laws where it stated that I could represent myself in a Court of Law.

Q Who explained that to you, who showed those laws to you?

A It was showed to me by Mrs. Furman."

Page 78

BY MR. MAHON

"Q Would it be a fair statement to say that without Mrs. Furman's assistance, you would not have been able to represent yourself alone in terms of what forms were necessary?

A Without a secretarial service to handle those forms, I wouldn't have been able to do the work myself, no."

G. In the case of *Mayden vs Mayden,* Petitioner's Exhibit 5, James H. Mayden testified as follows:

Page 7

BY MR. MAHON

"Q Do you have secretaries in your office?

A I sure do.

Q Do you pay any of them $10 a page?"

Page 8

BY MR. MAHON

"A I'm not allowed to use secretarial help for business work.

Q You don't have any idea what the going rate is for secretarial work?

A I really don't, I honestly don't.

Q Well, how long did it take to do them?
A I don't – I was probably there maybe an hour.
Q What's an eight-hour day, roughly $[illegible] a day, $2,000 a week? You feel that was reasonable?
A I feel it was reasonable concerning the alternative.
Q What was the alternatives that you were considering?
A I guess the alternatives would be –
Q A lawyer?
A I thought – pardon me?
Q A lawyer?
A The alternative to typing a paper, I don't think that's the purpose of the lawyer.
Q No, I say, was that the alternative, you figured that was a fair price compared to the alternative?
A No, no, not at all. I don't think I like the way this is going. It's making me uncomfortable."

Pages 9 and 10

BY MR. MAHON

"Q You paid her $50 only to type up papers?
Q Is that correct?
A I guess that's basically it, yes.
Q In other words, you said, I want to give you a petition for dissolution of marriage and she wrote down Petition for Dissolution of Marriage?
A I honestly don't remember what they said.
Q Would you have known to tell her that's what you wanted to draw?
A A dissolution of marriage?
Q A petition for dissolution of marriage, would you know that's what –
A My wife would have."

Page 11

BY MR. MAHON

"Q Well, you're the one who filed and you're the one who paid?
A Okay.
Q All right. Did you dictate the petition to her to type?
A To Rosemary?
Q Yes.
Q No, I did not. Now, we had it wrote down on a piece of paper and we sat there, yeah, I guess we did because I sat there and I said this said this way and this to be done and this to be done and she typed it."

Page 20

BY MR. MAHON

"Q An Answer and Waiver, have you ever heard of that?
A I do not know the names, by the specific names of the documents, no.
Q How did you know you needed one?
A That seems – I don't know, you know, what are you asking me to say?
Q Well, did you need one?
A Obviously if there's one there I needed one.
Q Well, Mr. Mayden, what I'm trying to say is, from your testimony that you have given me, Mrs. Furman served only as a secretary. Now, if that is correct, then you told her what you wanted, you told her what papers you wanted and you told her what you wanted drawn. Now, all I'm trying to say is if under oath you're telling me that, please tell me what you told her you wanted,

that's all I'm asking you to do. It seems a sensible series of questions, doesn't it?

A No, it doesn't seem sensible at all."

Page 21

BY MR. MAHON

"Q What parts or part wasn't?

A Almost everything.

Q You got only a secretarial service, correct?

A I don't really feel I'm qualified to judge what you're asking me to say because I'm not sure what you want me to say.

Q I don't want you to say anything except a response to my question.

A Then I would say I do not know. That's the most honest way. I hired Mrs. Furman, it's my understanding, to do those papers, okay.

Q To do those papers?

A To type up divorce papers.

Q You hired her to type up divorce papers?

A Right. I did not hire her for legal counseling.

Q Who furnished the papers?

A I went to a lawyer for legal counseling.

Q Who was furnishing the papers, you or her?

A You mean those papers, it was me, I guess.

Q You told her what paper you wanted drawn?

A Not by the specific name, no."

Page 22

BY MR. MAHON

"Q You didn't know, did you?

A No, obviously I didn't know, you knew that.

Q Did you know or not that you needed an Answer and Waiver?

A I don't know because I don't know what an Answer and Waiver is.

Q Well, if there was one filed in your case, where did you get the information from as to what should go into it?

A Was there one filed in my case?

Q Yes.

A. I do not know.

Q Did Mrs. Furman tell you what went in it?

A At the time, I don't remember.

Q You didn't know about an Answer and Waiver, did you?

A No.

Q Do you even know what it is now?

A Obviously I don't know what one is, you know.

Q You know, so what I'm asking you is there's one in your case. Where did it come from? All she did was type for you.

A She must have typed that."

Page 23

BY MR. MAHON

"Q Somebody must have told her, I want an Answer and Waiver and here's what I want you to type down, who did it, you?

A I really don't remember how the conversation – I'm trying to remember the conversation. She might have said – well, I don't know whether she would or not.

Q No, because that's going to get past that typing thing, isn't it?

A No, I don't think so.

Q What did Ms. Furman might have said?
A I was trying to remember. I really don't remember.

Q But you know that you didn't tell her what to put in it because you don't know what goes in an Answer and Waiver, do you?
A Well, I don't at the time. She might have said something – I don't know, I really don't.

Q You think you might know what goes in an Answer–
A I don't understand why – obviously I already said I didn't understand what goes in. You make the questions, I give you a direct yes or no."

Page 24

BY MR. MAHON

"Q Did Mrs. Furman tell you what goes in an Answer or Waiver?
A No.

Q Who told you?
A Nobody told me. I don't even know what one is, obviously.

Q How did it get drawn?
A Evidently they typed it with the rest of the papers.

Q How did she get the information that went in there?
A I guess she, if it's something that I have to tell her, then she must have asked me if that's what you're trying to get me to say."

Page 26

BY MR. MAHON

"Q If you only hired Mrs. Furman to type for you, how was the information determined as to what was necessary to go in here?

A Can I ask you something? What's my alternative to sitting here listening to this crap?

Q To go in front of the judge."

Page 29

BY MR. MAHON

"Q Did somebody ask you how long have you been a resident of Florida? And if so –
A Well, if it's in there and I didn't write it down, which I don't think I did, then I guess at the time it must have been asked.

Q Did Ms. Furman ask you the question?
A I guess I don't really remember, but if it's in there and I didn't know it, then obviously she must have asked it. I'm not sure if it was me or her."

H. In the case of *Mayden vs Mayden,* Petitioner's Exhibit 6, Judith Marie Mayden Testified as follows:

Page 13

BY MR. MAHON

"Q And the information that you gave her with regard to the settlement and such as that, you told her about it, and the other stuff she asked you questions in order that she could put it in there, correct?
A Yeah."

Page 22

BY MR. MAHON

"Q Or did she prepare that as part of the papers that you had to file?
A She may have prepared it as part of the papers. I don't remember which it was.

Q Did she ask you whether you wanted to admit the allegations or deny them, either one of those questions?

A I don't –

Q Do you know what that means?

A Well, as far as I was concerned, there weren't really that much, what I would call allegations in the petition.

Q Well, what parts were you admitting or denying?

A I think that I decided or, yeah, that if you admit the allegations, then that's saying no contest because then if you deny them, then you have to go back to court and have somebody say, you know, you have to tell why you deny them and you have to prove that they were untrue."

Page 25

BY MR. MAHON

"Q Well, but did they tell you that he could proceed to get it without your being there, whether you wanted to or not?

A Well, yeah.

Q Did they tell you that he wouldn't even have to tell you when it was?

A No, I don't –

Q And, Ms. Mayden, did anybody tell you if he decided not to put that stipulation in evidence where he agreed to pay you any money that he could go ahead and get a divorce without that being in there?

A I didn't know that but it was in the agreement.

Page 26

BY MR. MAHON

"Q I understand it was in the agreement but did you know it was not necessary for him to put the agreement in at the final hearing?

A No, I didn't know that.

Q Would you have signed a Waiver knowing that that might have occurred?

A Well, it wouldn't have occurred because it was in the agreement.

Q You don't understand me. In other words, at a final hearing if you are not there?

A Uh-huh.

Q The agreement doesn't have to be in evidence?

A No I guess it wouldn't have to be."

Page 28

BY MR. MAHON

"Q Ms. Mayden, has the trust fund been set up for the child?

A Yes, uh-huh.

Q Whose name is the trust fund in?

A It's in our daughter's name and both of our names.

Q All three?

A Uh-huh.

Q And is it being deposited according to the terms of the stipulation?

A Uh-huh.

Q Has the house been sold?

A No, he's still living in the house.

Q He is living in the home?

A Yes.

Q And you and the child are living somewhere else or is the child living with him?

A No, the child is with me. We're living in an apartment.

Q I assume then he's paying the payments and the taxes and everything such as that on the house?

There's nothing about that in your joint stipulation and agreement?"

A No."

Page 29

BY MR. MAHON

"Q May I ask you, have you ever had an opportunity to look over this stipulation and agreement?

A Uh-huh. I realize that I probably have left myself open in a lot of areas.

Q Who actually typed up the stipulation for you?

A Who actually typed it?

Q Ms. Furman?

A Ms. Furman, I believe.

Q Did you just tell her generally what you wanted and she put in in there?

A No, not – well, not really, generally. We, I believe, told her generally what we wanted and then, you know, made it sound a little bit better, you know, sentence structure wise, but I, you know, and she typed up a rough draft right at the time we were talking so I don't know whether she typed the final or one of the girls in the office typed the final."

I. In the case of *Holmes vs Holmes,* Petitioner's Exhibit 4, Frances R. Holmes testified as follows:

Page 6

BY MR. MAHON

"Q No, ma'am, I'm just trying to get you to answer the question for me and nothing else.

You said she did nothing but type. Now you work in an office, you know, you either dictate or something, the same thing, and all I'm asking you is did you dictate this Petition to her?

A Did I say these – no, I didn't say these words to her.

Page 7

BY MR. MAHON

"Q Certainly you didn't, you're not a lawyer, are you?

A Right.

Q You wouldn't have known the meaning of them or necessity for them, would you?

A Right.

–

–

Q Would you?

A No, she typed them, I told you that.

Q Let's go back and start again. Tell me what happened when you went in.

A I just told her I wanted to get a divorce, would you, could she prepare the papers for me.

Q And she told you that she could?

A Right.

Q All right. Did she tell you how much she would charge you?

A Yes.

Q Now, then what did you all discuss?

A How much did she charge me?

Q Yes.

Page 8

BY MR. MAHON

"A It was right in the neighborhood of $50.

Q Did you pay her?

A Sure.

Q Check or cash, do you remember?

A I don't remember.

Q All right. Now then, what happened then, she said yeah and you said all right, I want you to do it?
A Right.
Q So what happened then?
A So when she had them typed up, I went back and picked them up.
Q Well, somehow or another something had to go in them. Did she ask you how many children you had or if you had any children?

–
–

THE WITNESS: Like I said, I just don't –
I do know that she typed them up for me.
I went back and picked them up.

BY MR. MAHON:

Q I'd just like to get your best memory is all I'm trying to do. Did she ask you if you had any children?"

Page 9

BY MR. MAHON:

"A I don't remember if she asked me that question.

–
–

MR. MAHON: Did she ask you if you owned a home?

–
–

THE WITNESS: See, I just don't remember."

Page 10

BY MR. MAHON

"Q Did you have any property at all?

A I had a mobile home but my husband had already said he would give it to me, so –
Q Did she ask you that?
A She didn't ask me, I already knew.
Q Well, does it say anything about it in the papers?
A I don't think it does.
Q The only thing I'm trying to ask you, Mrs. Holmes, is somehow or another what's in there got in there. Somebody wrote it down in the form that it's in and all I'm trying to find out is how did it get in there and, you know, how did the paper get drawn?
A Well, I'm sure that I would have given her the information that's in here.
Q You just sort of volunteered it?
A Well, naturally.
Q Irretrievably broken, those words you just volunteered them?
A I probably did not use those words.
Q Well, how did that get in there?
A Again, I tell you, you're asking me questions that I don't remember. You understand this has been two years ago and you're expecting me to remember things that I said and I don't."

Page 11

BY MR. MAHON

"Q I'm not expecting you at all, you have the perfect right to tell me I don't remember.
A Okay. That's what I am trying to tell you.
Q All you have to do is say it.
A Okay.

Q I'll stop, I don't want to harass you.
A I don't want to be harrassed because I resent being down here.

Q I understand you do perfectly.
A Because I don't think you got a right to probe into what I consider is my own personal business and I just don't feel like you got a right to do this to me.

Q Well, we do.
A You proceed then, you proceed."

Page 13

BY MR. MAHON

"Q And I tell you, that is the truth. Now, if you would, please, ma'am, how did the information get in there? Could you tell me that?
A Well, okay, like I said, I'm sure I give her what information she needed.

Q Did she ask you any questions at all, do you know? –
A All the information I had was what I got from a friend.

Q Did she tell you what you needed to put in a petition?
A I can't remember what all she told me I needed at this point.

Q Did you even know you had to file a thing called a Petition?
A Oh, yes; oh, yes."

Page 14

BY MR. MAHON

"Q He was in Brazil? Where was he in Brazil?

A Rio, close to Rio.

Q You were in contact with him and in touch with him?
A Oh, sure."

Page 15

BY MR. MAHON

"Q All right. Did you know what you had to do with regard to him? I mean, how were you going to get him involved in the case?
A Oh, I knew all I had to do was send him the papers.

Q What papers?
A The divorce papers.

Q Well, I mean but what else did you have to send?
A Because he had to go before a notary.

Q What else did you have to send him?
A I can't remember what all papers I did send him now.

Q Had you ever heard the words, Answer and Waiver?
A Right.

Q Who told you those words?
A I don't remember.

–
–

Q Did you tell her you wanted an Answer and Waiver filed, Mrs. Holmes?
A See, I don't remember.

Q Did you know the words, Answer and Waiver, and that they were necessary in a case of this type when you went there?"

Page 16

BY MR. MAHON

"A I don't remember.

Q And you're answering to the best of your ability?

A I definitely am.

Q And honestly with me?

A Right.

Q And did anybody ask you where your husband was?

A I'm sure she did ask me.

Q Did she ask you was your husband agreeable to the divorce?

–

–

THE WITNESS: I told her that he was, I remember telling her that he was –

–

–

BY MR. MAHON:

–

–

Q I understand. But it has to be written down on some paper, didn't it?

A Yeah."

Page 17

BY MR. MAHON

"Q Did you know that?

A Yes, I did.

Q What had to be put down?

A It's written on the paper.

Q What had to be put down on the paper?

A Who got the custody, how much support.

Q Was that to go into the Final Petition for Dissolution, you put all of that in there?

A Right.

Q And you knew it had to go in there, that you were going to get custody and your husband was going to pay you how many dollars?

A Right.

Q Did you put in the Petition what was going to be done with your mobile home?

A Do you know I can't remember that.

Q Not any of what you just told me went into the Petition at all, did it?

Does it say anything in there about the custody and how much support he's going to pay you or what, do you know?

A It doesn't seem to be in here.

Q How about the Answer and Waiver, did you tell her you wanted that filed, which is the next paper?

Page 18

BY MR. MAHON

"A Which one, this one here?

Q No, this one here. Just let me ask you: What goes in an Answer and Waiver, what's necessary to have in one in order for it to be good, do you have any idea?

A I already told you I had her do the papers, so –

Q What is that, do you know what that is?

Did you tell her you wanted a joint stipulation for a motion for a final hearing drawn?

A I didn't use those words, no.

Q You didn't even know what one is, do you, did you at that time?

A No.

Q Who told you you needed that?

A Possibly she told me.

Q Well, were you consulting with somebody else at that time? Or was she the only one you consulted?

A No, I had consulted but I couldn't afford it, so I give it up.

Q Let's go a little bit further, the Final Judgment, who drew that up?

A She typed it up.

Q Mrs. Furman?

A Uh-huh."

Page 20

BY MR. MAHON

"Q You were telling yourself to introduce yourself, why did you do that?

A Well, these were notes to myself, but, you know, I just can't imagine anybody that would pick up something like this that I accidentally left in the Courthouse and not return it to me.

Q Well –

A That's unreal, and then use it against me or whatever, you know, whatever. I just can't imagine, like where I work, taking something that somebody accidentally left there and not returning it to them.

Q I can't imagine that. I can't imagine any of those things either myself, Mrs. Holmes, so let's go ahead.

Page 21

BY MR. MAHON

"A Okay. Let's go ahead.

Q Why did you write it?

A Why did I write it?

Q Yes, ma'am, what were you doing, were you making something up for yourself?

A Yes, evidently I sure was.

Q And you decided to strike out Petitioner Requests and put, I hereby request?

A Yeah.

Q Nobody told you to do that?

A No. Anything I have got written on here, I did myself.

Q And did you have a witness?

A Yes, I did.

Q Who told you you had to have a witness?

A I don't remember.

Q Was anything done in the Final Judgment about the mobile home?

A My husband signed it over to me.

Q Was that any agreement by you that you would waive alimony?

A No.

Q Did you ever ask anything, what would happen in the event that you became permanently disabled and was not able to support your child, would you be able to go back and ask for some alimony under those circumstances?

A No, I didn't."

Page 22

BY MR. MAHON

"Q How many times did you go to Mrs. Furman?
A As I recall it must have been a couple."

Page 23

BY MR. MAHON

"Q Did you go down and file it with the clerk?
A Yes.
Q The first time you went?
A Right.
Q The first day? How did you know where to take it?
A I inquired, I can't remember who I asked.
Q Who did you inquire of?
A I probably asked Rosemary, I don't remember now.
Q She didn't tell you, you take this down to the Court and take X number of dollars down there and file it with the clerk?
A I can't remember those exact words, no.
Q Something like that?
A Something I say because I don't remember."

Pages 25 and 26

BY MR. MAHON

"Q Correct. Then, the sum and substance of your testimony as I understand it is that really the only thing Mrs. Furman did is type out some papers you dictated to her?
A Right.
Q And you paid her $50 to do that typing?

A I think it was $50, I'm not going to say for sure.
Q Just to do that typing?
A The papers, yeah.
Q Nothing else?
A No.
Q Do you think that was rather high for a few minutes of typing?
A Not considering when I went to see a lawyer and he wanted $400.
Q In other words, it was a question of paying the lawyer $400 or paying her $50?
A That's right.
Q That's exactly right, you weren't paying just for the typing then, you were paying for somebody to instruct you in how to get the divorce and what to do, correct?
A Well, if you want to put it that way."

Pages 27 and 28

BY MR. MAHON

"Q Does that say, May I hand this to the Court, please?
A Yeah, that's what it says.
Q Why did you write that, what does it mean, what was it even talking about? What does it even refer to, Mrs. Holmes?
You don't have the faintest idea, do you?
A Well, like I said, I remember writing all this.
Q Well, why did you write that last part, did somebody tell you write it?
A I don't remember?"

Page 36

BY MR. HADEED

"Q Would you have been able to process your papers and know what papers to have filed without having hired a lawyer and without having gone to Mrs. Furman?

A No.

Q Is that because you wouldn't know what forms were necessary?

A Right."

Page 38

BY MR. MAHON

"Q You have said you would not know what papers to file or what proceedings or where to go without the help of a lawyer or Mrs. Furman, correct?

A Right.

Q And you didn't have a lawyer?

A No.

Q So acutally that information was supplied to you by Mrs. Furman, correct?

–

–

A The papers, yeah.

–

–

Q Well, you didn't have a lawyer then, all you had then was Mrs. Furman to give you this information?

A Right.

Q And she did that for you, correct?

A Yeah."

Page 39

BY MR. MAHON

"Q And told you what to file and where to go and what proceedings to take, in other words, you didn't know how to go to the Clerk's Office?

A She possibly told me I had to go, naturally.

Q And you didn't know you had to actually file a Petition as opposed to an Affidavit to get a divorce, did you?

A I told you, I did not know about the papers.

Q And she told you you had to have a Petition, correct, to start it off with, isn't that right?

A Possibly.

Q And you gave her the information to put in it and she told you you all would have to have a Motion to set it down and you gave her the information for that, correct?

A Sure, I probably gave her the information."

Page 40

"MR. MAHON: Isn't that correct? I mean you didn't know that yourself, did you, Mrs. Holmes?

THE WITNESS: I'm not a lawyer.

–

–

Q And she told you that's what you needed and you gave her the information to put in it and she drew that up, correct, and she told you you'd have to have a final hearing in the matter and how you got that, isn't that correct?

–

–

A. I don't remember the words.

Q I understand. Not the words, but that's how you knew you had to go down in front of the judge, correct?
A Right."

J. In the case of *Touchton vs Touchton,* Petitioner's Exhibit 11, Daniel Andrew Touchton testified as follows:

Pages 3 and 4

BY MR. HADEED

"Q Do you recall what happened at the office?
A Yeah, we went in, she asked us questions, typed up papers.
Q Do you remember any of the questions that she asked you?
A Yeah, where do you live, what you want a divorce for and just told us how much it was going to cost.
—
—
Q Do you remember some of the other questions she asked?
A Not in detail. She just asked questions and typed it up as she asked the questions."

Page 6

BY MR. HADEED

"Q Were you satisfied with Mrs. Furman's services?
A Yeah, because I come out on top. I didn't lose the house or get taken for a lot or nothing because I went and signed the papers.
Q You say you didn't lose the house, what do you mean by that?

A Well, other friends have had lawyers that had gotten divorces, the husband's been put out of the house and the wives have been given the house and I just went ahead and moved out but I knew I could move back in whenever I wanted to.
Q Did you and your wife have an agreement about that?
A No."

K. In the case of *Touchton vs Touchton,* Petitioner's Exhibit 10, Debra A. Touchton testified as follows:

Page 10

BY MR. MAHON

"Q Did you ever have any discussion with Mrs. Furman about a witness or having to have a witness?
A She told me that I had to have a witness when I went up to Court so I got my cousin to go up there with me and she wrote on a piece of paper and told me what to say and what for her to say.
Q Who did that?
A Miss Furman.
Q And was that the second time you went there with your husband or after that?
A Oh, its been so long ago, I'm not sure but I think that after I went and filed my papers, she had me come back there before I went. She did, she had me come back there before I went to Court and that's when she did it and told me, you know, what to say when I went to Court."

Page 13

BY MR. HADEED

"Q Mrs. Touchton, let me see if I can understand

your testimony. You stated I believe that you had no complaint about Mrs. Furman's preparing these pleadings for you and advising you on how to go to Court and represent yourself?

A Not at the time I didn't but now that I know that, you know, about the house, that he could have took the house from me and she didn't say anything about the house and you know, I wouldn't never do it again."

Pages 14 and 15

BY MR. HADEED

"Q If you had to do it again would you represent yourself?

A No, sir.

Q You would not?

A Witness nodded.

Q Why not?

A Because, just look at all the things I would have lost.

Q Well, did you lose anything, Mrs. Touchton?

A No, but I could have.

Q You could have, how do you think you could have lost?

A Well, the house wasn't drawn up in the papers and where would I be now if I, you know, didn't marry him back. I wouldn't be nowhere, have to get out and get on my own, be on welfare.

Q So your only problem then, your only fear then relates to the house?

A Yeah, basically, yeah.

Q During the time that you were divorced, did you

live in the house continuously?

A Hu-huh."

Page 16

BY MR. HADEED

"Q Told how to do it?

A Right.

Q Did you have any trouble doing it?

A No, sir, not until I went to the Judge.

Q What trouble did you have with the Judge?

A Well, see, he's one of the ones that told me to, about the house. He told me that the house wasn't in the papers and that for me not to come back crying to him if I don't have the house and that I wasn't supposed to be doing this, it wasn't supposed to be doing this, it wasn't right to do it and gave me a lot of, a lot of stuff.

Q Not to have the house in the papers?

A Well, he told me the house wasn't – he asked me if I owned any property. I told him yes. He asked me why wasn't it in the papers and I told him, I don't know and he asked me who sent me and I told him woman's war.

Q I'm sorry, I didn't understand your answer.

A The Judge asked me who sent me and I told him woman's war because that's what they told me and I told him woman's war and I made a fool of myself and he kept telling me, remember, you're under oath so he told me that my husband, could, you know, kick me out of the house and I wouldn't have no place to go and asked me if I still wanted the divorce and –"

Page 17

BY MR. HADEED

"Q What was your answer?
A Yes.
Q Was your husband present at this hearing?
A No, sir."

Page 19

BY MR. HADEED

"Q Do you recall whether while you and your husband were present at Mrs. Furman's office and she was asking you questions and you were answering and you were having your instructions that she was typing anything while you were talking, do you recall that?
A Yeah, she was."

Page 20

BY MR. HADEED

"Q Well, or that you said?
A The only thing I remember is she was saying how pretty my little girl was. That's all I remember and she was saying she looked like her Daddy and wanting to know if we really wanted a divorce.
Q And what was your answer?
A I said, yes, I wanted it.
Q What was your husband's answer, did he answer?
A He said he didn't care.
Q Well, then what happened, can you remember after that?
A She just typed up some papers.
Q Did she ask you your full name?

A Yes.
Q And address?
A Yes.
Q And your husband's full name?
A Yes.
Q And address?
A Yes.
Q And where you were married?
A Yes."

Page 21

BY MR. HADEED

"Q And when you were married?
A Yes.
Q Did she ask if you had any other children other than your daughter, Jennifer?
A Yes.
Q And what was your answer?
A No.
Q And did she ask you about who was to have custody?
A Not that I remember.
Q Did you tell her who was to have custody?
A Yes.
Q What did you tell her?
A Told her I wanted custody of her.
Q Did she ask you about what visitation privileges Danny should have, do you recall that?
A Huh-uh.
Q Do you recall any other discussions about the things that went in your divorce?

A She just said about child support, she said the lowest you can get in Court would be $25.00."

Page 22

BY MR. HADEED

"Q Did she just tell you that or did you ask her a question, I mean how did that happen?

A She just said it. She just said, child support, the least you can get in Court is $25.00 and wrote it up."

Page 23

BY MR. HADEED

"Q Could you have represented yourself in Court without Miss Furman's assistance, could you have done it by yourself?

A You mean went up there and said what I said and all?

Q Yes.

A I wouldn't have known what to say, what to do.

Q Or what papers you needed?

A Right."

Page 24

BY MR. MAHON

"Q Did he ever tell you it was his house?

A All the time, all the time.

Q And that he didn't have to let you stay there?

A Right.

Q Unless he wanted to?

A Right."

L. The following are excerpts from the direct testimony of Rosemary W. Furman given in Open Court on July 18, 1978, in Jacksonville, Duval County, Florida:

Pages 33 and 34

"MR. MORRISON: We believe it's material because the question is whether or not this is a reasonably necessary service that she's performing. And that's a matter that the Court's got to decide and among the factors the Supreme Court of Florida has to take into account is the nature and extent of the problem.

It was very clearly recognized in the Brumbaugh decision when they made a significant change from the prior rulings of the Court in other dissolution of marriage cases.

We are trying to present the Court with evidence to convince it in Brumbaugh they didn't go far enough. That, in fact, the real necessity involves much more than simply preparing forms that can be filled in and blanks that can be filled in.

THE COURT: The previous ruling remains.

MR. MORRISON: Your Honor, at this time we'd like to proffer evidence to the Court that if permitted to testify Ms. Furman would testify that in addition to the problems that she had encountered with battered wives who were unable to get legal assistance, she would detail problems with self-filers who sought to take advantage of their Constitutional right to file for dissolution by themselves and were unable to do so."

Page 35

BY MR. MORRISON

"Q Now, Ms. Furman, when you began this work did you have any forms that you prepared for use in the work?

A No, sir, I didn't have any but I had many people who came to me with divorce kits that they had purchased through the mail, and otherwise, which they found themselves unable to understand and impossible for them to use.

Q Did there come a time when you began to prepare forms of your own?

A Yes, sir, there did to facilitate matters."

Page 40

BY MR. MORRISON

"Q You said what to them?

A I said, "Have you lived in the State of Florida more than six months so the Court can, in fact, grant you a divorce?"

Page 41

BY MR. MORRISON

"Q By whom was this Exhibit 4 prepared?

A By the Florida Bar, I believe.

Q No, it says legal – says National Organization of Women, Legal and Defense Fund, 1975."

Page 43

BY MR. MORRISON

"Q You prepared that form yourself?

A Well, what I did was hand one to the person and put the other in the typewriter so they could

anticipate the questions and dictate to me the answers.

Q You would then what?

A Type it. I would type the answers they gave and at that time it was much easier to read than it is now.

Q You typed the answers to the questions yourself?

A Yes, sir, I did."

Page 44

BY MR. MORRISON

"Q Ms. Furman, after you prepared the Respondent's Exhibit 3 by filling in the blanks on the questionnaire resulting from the questions you asked the individual clients, what next took place?

A Well, we had to ascertain whether or not the spouse would sign, the spouse was willing to agree to the divorce. In most of the cases the spouse was not willing to agree to the divorce because they were wives who had been abused and we had to ask for –"

Page 45

BY MR. MORRISON

"A The questions had to be requested to determine whether it would be with consent or without consent.

Q Right.

–

–

Q So you ascertained then whether the spouse would or would not consent to the dissolution?

A Yes, sir.

Q And after that what next did you ask the clients?
A Well, it was a matter of completing the pleadings and telling the people to return when they would be all typed up so they could be instructed on how to file it.

Q At that time did you receive any payment?
A Oh, yes, sir. When we made out the form originally the people paid the fee, which was flat fee of $50."

Page 46

BY MR. MORRISON

"Q Did you give the people a receipt for that?
A Yes, sir. Well, I would not accept their money until they signed an acknowledgment that they understood clearly that I was not an attorney, that I did not dispense legal advice. They had not asked for legal advice and they clearly understood they were to represent themselves in court.

They were paying their fee for secretarial services only.

Q Did you have a form that you used for the receipt?
A Yes, sir.

Q I show you a document marked Respondent's Exhibit 9 for identification and ask you if that's the receipt form (tendering document to witness)?
A Yes, sir."

Page 47

BY MR. MORRISON

"Q Tell us specifically what papers you prepared.
A Yes, sir, that included the petition for dissolution

of marriage, an answer, a waiver, especially when the respondent was out of state or would have difficulty in traveling. Then in which case we sent the pleadings, the answer and waiver, one complete copy of the dissolution together with the answer and waiver to the person out of state with instructions to return them to the petitioner. That was included in the $50.

The joint stipulation for a motion for a final hearing and the final order for the judge's signature was included.

Q Did it include any other services?
A Yes, sir, in the event it was necessary, it included injunction against abuse. It included restraining order. It included – that is, restraining order that minor children are not to be moved from the jurisdiction of the Court.

It included restraining order against harrassment of the wife; physical abuse of the wife; telephone calls; vandalism of the wife's property and whatever the injunction needed to be.

This is all included in the $50.

Q And do you include any post-judgment services in that $50?
A Yes, sir, if after the divorce the instruction – the injunction is violated by the person who has been enjoined, we make motion on behalf of the – petitioner comes in and says "The Court's order is not being obeyed." And the only way we can call this to the attention of the Court is by typing up a motion for enforcement and three copies of a notice of hearing that he show cause, if any there be, why he should not be held in contempt of court for violation of the Court's order."

Page 48

BY MR. MORRISON

"Q You mentioned typing up of some other papers. I show you documents marked Respondent's Exhibits 1 and 2 for identification. I believe one of them is marked on the back (tendering documents to witness.)

A Yes, sir."

Page 49

BY MR. MORRISON

"Q Thank you. You say that the person was instructed to return at that time to pick up the papers?

A And to be sworn and their signatures notarized and they are instructed on how to file.

Q Are you a notary public?

A Yes, sir."

Page 50

BY MR. MORRISON

"Q You say people had to be instructed on how to file it. Would you tell us a little bit about your instruction process at that point when they come back and pick up the papers?

–

–

A – Most of them have never been to the courthouse in their lives. You have to tell them to go to the courthouse. It's next to City Hall, one is the tall building and one is the short. You go to the main floor in the courthouse and find Room 103.

–

–

Q Incidentally, you do handle divorces for men as well?

A Very rarely, sir.

Q About what percentage?

A Maybe ten percent."

Page 51

BY MR. MORRISON

"Q You are now explaining to the Court what you instruct the self-filers to do?

A Yes, sir, exactly. So I say, "Take this folder." You have two folders, one folder with their own papers in them and one folder for the Court, which has to be kept separate. And they understand that these are the originals.

"These are the signed, sealed, notarized originals and these are what you give the Court. The other folder is marked Personal Folder. Disregard that for these purposes.

"You are going down to file. When you go down to file to the courthouse through the main entrance and find Room 103 marked Clerk of the Court, S. Morgan Slaughter, with double doors.

"You enter there and walk straight forward and see a sign that is marked Law Department. You find the counter and put your folder down. The young lady will ask you, 'May I help you?'

"You say, 'Yes, ma'am, I would like to file this action.' . . .

Page 52

(continued by Mrs. Furman)

"The young lady will say, 'That will be $32 cash filing fee, cash, no checks.' You be prepared

to pay cash and she will give you a filing receipt.

"At that time she will get a case number when she rings your money. She keys that into a computer. She will write the name of the judge and room number on the receipt.

"She will remove the pleadings from the file and mark them case number and division. She will mark also the final order, which she does not remove, with a case number and division.

"Then she will give you back your folder only with the final order in it because one cannot presume that the judge will grant it until he does.

"Then you close your folder and you put it away and take your filing receipt and go out to the elevator and go up to the second floor and the information clerk will tell you where the room is."

And then I show them, I hope, a diagram.

Q Is that diagram marked Respondent's Exhibit 10?
A 10, yes, sir. And I explain –

Q Who prepared this diagram?
A I did.

Q Proceed.
A There is no other way to explain it except by drawing a picture."

Page 53

BY MR. MORRISON

"Q And you verbally explain what you tell the people?
A I tell them to, "Come into the door that has the number and you will find two secretaries to two judges to two sets of chambers. Approach the desk of the secretary which has the name of your judge on it and give her your filing receipt and

say, 'I have filed an action downstairs. Please, ma'am, I need a date for final hearing,' whereupon the secretary will look at the judge's docket, count down the necessary number of days and say, 'What is your name,' and she will fill in your name on the opening and on your filing receipt she will put the date and the time that you will present yourself at final hearing."

Q And those are the instructions you give to each person?
A Every person.

Q And you continue to do that today; is that correct?
A Yes, sir."

Page 56

BY MR. MORRISON

"Q Ms. Furman, I take it that these, one of the three forms is given to each of the clients; is that correct?
A Originally, and I don't have it any more, but it was all on one form, but it was too confusing.

Q You now give one of the –
A Yes, it simplifies matters.

–

–

Q Would you tell the Court what time you are talking about in the terms of the use of these three –
A It was done verbally before Brumbaugh. After Brumbaugh it was converted to paper in compliance with Brumbaugh."

Page 57

BY MR. MORRISON

"Q You indicated that after the client has been given the copies of the papers and instructed how to go down and file them to the Court, what other instructions, if any, do you give at that time?

A Well, I say, "You will be given a date for a final hearing and please come back to be briefed on how to conduct it so you don't waste the Court's time.

–

–

Q If the client chooses to come back, and incidentally, what portion of the clients come back to your office for this final briefing?

A Almost 100 percent."

Page 58

BY MR. MORRISON

"Q Let's talk about beforehand.

A Before Brumbaugh I used to give it all orally. I'd tell them how to present themselves to the secretary and –

Q Try as best you can to recall specifically what you would say to a typical client who would come in at this point in anticipation of the final hearing.

A I don't have my map."

Page 60

BY MR. MORRISON

"Q Ms. Furman, I show you a document marked as Respondent's Exhibit 20 for identification, and ask you if you would tell us if you recognize that document (tendering document to witness)?

A Yes, sir, this is –

Q Would you tell us what it is?

A It's a strip with the three questions and – most people are very upset and they don't remember what you tell them. What you have to do is stick this strip on the bottom of the petitioner's copy of his or her petition.

Q Did you prepare that series of questions?

A Yes, sir, I did."

Pages 70 and 71

BY MR. MORRISON

"Q Let me proceed, Ms. Furman. Would you tell us in general where your clients come from, how they come to you?

A Mostly by word of mouth, recommendations from other people who have been through the same process.

Q And you place ads in the newspaper?

A Yes, I do."

–

–

Q Have you conducted any meetings or seminars?

A Oh, yes, sir, by way of public education.

Q Have you received clients from those seminars?

A Yes, sir.

Q Can you tell us roughly speaking how many dissolution of marriage papers you have prepared in the last three years?

A Not with any degree of accuracy. In the beginning it was very, very few but it has, as people begin to refer other people, I would say several hundred."

Page 73

BY MR. MORRISON

"Q And in the event that the dissolution of marriage is granted, you then take the records, the copies of the intake forms and other records you maintained, and discard them?

A We don't need them any more. They are useless.

Q But the client has maintained a copy?

A Oh, yes, the client has a copy."

Pages 74 and 75

BY MR. MORRISON

"Q Am I correct, based on your testimony, that there are no records from which you can ascertain the percentages of fees, a percentage of cases of which the fees paid were $50, 25 or some other amount; is that correct?

A I don't have – I would be guessing. I have guessed.

Q But you have no records that would indicate that?

A No, sir. The reason why the four intake sheets are available on those cases mentioned in the Bar's complaint was because I provided in my counter-petition and motion for dismissal copies of them.

Q Which you obtained from the individuals?

A No, those were current. Yeah, I did obtain from individuals in two cases."

Page 80

BY MR. MORRISON

"Q Ms. Furman, earlier you testified that you previously gave to each client who came to you a document entitled a Woman's Guide to Florida Law, Respondent's Exhibit 4, and thereafter you gave

an excerpt of it. Do you still give those publications?

A No, sir, we do not."

Page 81

BY MR. MORRISON

"Q Do you give them anything in place of it?

A Yes, sir.

Q What do you give them now?

A The Legal Status of Homemakers in Florida by James F. O'Flaherty, Chairman of the Family Law Section of the Florida Bar.

Q Of the Florida Bar?

A Yes, sir.

–

–

Q Is that the portion you give to the clients who come into your office?

A Every client."

Page 82

BY MR. MORRISON

"Q Ms. Furman, do you currently give any other pieces of paper to the clients at the time of your initial intake process?

A Yes, sir.

Q What are those?

A Florida Statute Chapter 61

Q You give them a copy of that?

A Oh, yes, sir, every client.

Q What else, if anything?

A A copy of Florida Statute 454 having to do with attorneys-at-law because it shows a portion where it says that the people have a right to represent themselves in court. They have to be assured of that.

Q You mark that with yellow pencil?
A Yes, sir, on every one."

Page 84

BY MR. MORRISON

"Q But you still have them sign the acknowledgement that you are not a lawyer at the bottom?
A Yes, sir.
Q With regard to the instructions that you previously described to us that you gave to the clients regarding filing, do you still give those instructions?
A Not unless it's necessary. Oh, you mean as far as where to file, yes, we do.
Q You still give those orally?
A Yes, because it's impossible to do it any other way.
Q Because?
A Because they don't understand.
Q Do you also give any written instructions?
A As to where and how to file?
Q Yes.
A Those are the three little yellow sheets that were marked exhibits, I believe, 5, 6, something like that. I don't remember.

Those each tell where and how to file.

Page 85

BY MR. MORRISON

"Q Do you give any written instructions regarding the conducting of the case in court when the final hearing comes up?
A We do now.
Q Do you have in front of you a copy of those

written instructions?
A Yes, sir.
Q Is that Respondent's Exhibit 16 for identification?
A Yes, sir.
Q In addition to those written instructions, do you also give oral instructions?
A Well, we say, "Would you read it, please, and if you have any questions we'll try to answer them."
Q Do the clients have questions of you from time to time?
A Some can't read it at all.
Q Unable to read it at all?
A Unable to read it at all. They read it and say, "What do you mean," and you have to read it to them and explain each section."

Page 86

BY MR. MORRISON

"Q Besides those who are unable to read, you answer questions for others as well?
A When they don't understand, for clarification purposes, yes, sir.
Q When do you now give this written instruction to the clients?
A The day before they are going for the final hearing or two days before, whenever they come back for their briefing.
Q You give it to them right before the hearing rather than [with] the original papers?
A When they sign the original papers they are given these papers and asked, "Please study this before you come back for your final briefing. If you do not understand it when you come back" –

Q In your experience since you have written instructions, do your clients still return to you for final briefing?
A Yes, sir."

Page 87

BY MR. MORRISON

"Q Have you encountered any other problems besides [the] inability to read some of the forms?
A Some people's inability to understand.
Q Would you explain more fully what you mean by that?
A Well, they don't understand the system. They don't understand why they have to go before a judge if they are both in agreement on getting a divorce.
Q And they ask you questions about that?
A Yes.
Q Are there people who are unable to understand portions of the form?
A Yes."

Page 88

BY MR. MORRISON

"Q You have illiterates as clients?
A Oh, yes, sir.
Q People who are unable to read and write at all?
A Yes, sir."

Page 89

BY MR. MORRISON

"Q Do you have people who are able to read and write minimally but not read and write forms?

A Yes.
Q And is it possible for you to service them without giving them oral instructions?
A I don't see how.

—
—

Q Do you at any time read the form over before they leave the office?
A Well, if I don't, then I have to call them and ask for clarification.
Q Will you explain to the Court why it's necessary to call in these cases?
A If I'm unable to read something."

Page 90

BY MR. MORRISON

"Q You have experimented with various types of forms?
A We are always trying to make the forms more responsive to the people.
Q In you opinion, do you think forms can do the job?
A Not very well, but this is what we must do under Brumbaugh if we are to comply."

Page 93

BY MR. MORRISON

"Q Will you tell us, Ms. Furman, what, if any, practical problems the Brumbaugh decision has had in your delivering the service to your clients that you have been delivering in the past?
A It makes it extremely difficult to communicate

with the client and it hampers me [in] providing good service.

Q Now, beyond the intake forms, have you encountered any problems at the stage of which you brief the clients regarding the filing in the court or in the ultimate court appearance in terms of being limited only to written instructions?

A Yes, sir, I have difficulty. I need to use my map.

Q And you interpret Brumbaugh to prohibit you from using the map and describing on the map what people are going to do?

A I am not clear on the meaning of Brumbaugh. It has yet to be interpreted to me.

Q But you do not attempt to give written instructions in connection with your map?

A That's what the yellow sheet is. Exhibit No. whatever.

Q Is that Exhibit 16?

A Yes, sir, and this, together with the map, ought to service the purpose, but if it doesn't, then we have to clarify it."

Page 98

BY MR. MORRISON

"Q Ms. Furman, do you do any adoptions?

A Yes, sir.

Q And do you now have an intake form which you utilize for adoptions?

A Yes, sir.

Q Is that Respondent's Exhibit 17 for identification which now appears before you?

A Yes, sir."

Page 99

BY MR. MORRISON

"Q Do you have any forms for written instructions in connection with the adoption proceedings, Ms. Furman?

A Yes, sir, stepparent adoption instructions.

Q Has a copy of that been marked as Respondent's Exhibit 19 for identification?

A Yes, sir."

Page 100

BY MR. MORRISON

"Q Since the adoption of the decision of Brumbaugh, have you begun to utilize as many forms as possible in connection with the adoption?

A Yes, sir, in every effort to [comply] with Brumbaugh.

Q Have you encountered any problems in connection with using those forms?

A The same as with divorce forms. People have difficulty understanding and they need clarification.

Q Ms. Furman, can you tell us approximately what percentage of your business over the last three years has been in dissolution of marriage and adoption work as opposed to all the rest of your business?

A Very small part of my business.

Q What percentage would you say?

A Maybe 20 percent, 20 and 25 percent."

Page 101

BY MR. MAHON

"Q Ms. Furman, in order that we might be straight, Northside Secretarial Service is not a charitable

organization, is it?

A No, sir.

Q It is a pure profit-making business that you operate; correct?

A Yes, sir."

Page 102

BY MR. MAHON

"Q Do you file income tax returns?

A Of course.

Q Do you keep records to sustain the income tax returns?

A Of course, yes, sir.

Q Do your records reflect the amount of payments that are made by the individual customers who come to and utilize the service?

A On an individual basis, no sir. It's bulk.

Q You do not reflect in any of your tax forms or any of your forms from whom you receive the money and in –

A No."

Page 103

BY MR. MAHON

"Q – what amount?

A No.

–

–

Q Excuse me, please, ma'am. Would you consider that to be an overwhelming detail to keep the list of the people, a couple of hundred cases in three years, and the $50 they paid you?

A There is no requirement, Mr. Mahon, that I know of to do so.

Q You don't. Then your statement before the Court that you do cases at low fees and cases at no fees is completely unsustainable by any records?

–

–

Q Do you have any records to reflect that?

A No, sir."

Page 104

BY MR. MAHON

"Q And may I ask you this: You stated on direct examination that at the conclusion of the case you immediately destroy your records?

A There was no purpose in keeping them.

Q Is that what you do?

A Yes, sir.

Q And that includes your intake forms?

A Yes, sir.

Q Let me ask you with regard to the specific cases that the Bar Association mentioned in its complaint, were any of those cases open cases or were they all closed cases?

A I don't recall. They might have been all closed cases, yes, sir.

Q Let me respectfully try to refresh your memory. Do you remember if they all were?

A I'm not sure. 1976, it's difficult to remember back that far.

Q Well, we can just take them one at a time. In the Green case final judgment was entered.

A I presume. I don't know.

Q You have stipulated that it was. Would you like to look at the records and refresh your memory?

I will be happy to give them to you. You feel the need of it?

A As I recall, it was closed.

Q Well, would you like to look or is that correct, that it was closed?

A I don't follow you. What is the answer you want?"

Page 105

BY MR. MAHON

"Q Was it closed or not?

A As of the time that the charges were filed against me me?

Q Yes.

A It might have been, yes.

Q Look at it and tell me, please, ma'am.

A The charges, I believe, were filed November – I'm sorry, March 17th, 1977. This case was closed November the 4th, 1976, so it was, in fact, closed.

Q Did you manage to salvage out of your records an intake form?

A No, I got that from Mrs. Green.

Q From Mrs. Green?

A Yes.

Q You went and got it from her?

A No, she came to my office when I was typing my motion for dismissal to the Bar and I needed a copy of it for my motion because I wanted to show the acknowledgement at the bottom and I didn't have it. So I asked Mrs. Green for a copy of hers.

Q And in the Green case, the first one, then you got it from her; correct?

A I imagine I got it from them all.

Q Does it have on it the amount that was paid?

A "In full."

Page 106

BY MR. MAHON

"Q $50; correct?

A Would like to look at it?

Q Is that what it was?

A It says, "In full," so I assume it was $50. Anything less than that is not in full.

Q In the Green case there was no reduction?

A No, sir.

Q Did she have a particularly bad problem?

A Oh, Mr. Mahon.

Q So, you could give her some reduction or did you just charge her full?

A She did not come through the Hubbard House intake process so I had no way of knowing myself. I would have only her word."

Page 107

BY MR. MAHON

"Q Let me ask you about Ms. Ammons. She's the second one. Was that one completed?

A I believe it was.

Q Well, actually the Ammons case never was completed, was it? That was just where you prepared –

A All right.

Q You prepared –

A Yes.

Q You prepared nothing but a petition, did you?

A Well, Ms. Ammons was a brutally beaten wife, Mr.

Mahon, who had been beaten on a daily basis for eight years.

Q So bad she dismissed her own case; didn't she?
A She had filed divorce before through the attorney at Regency Square, so she dropped it.

Q Notwithstanding, you never completed any of the forms for her and never did any of the work for her except draw the petition and you didn't give her a refund and charged her the full $50?
A Yes, and she said it was the best 50 –

–
–

THE WITNESS: She said that $50 was the best $50 she ever invested in her life and her husband hasn't laid a finger on her since the day she filed it."

Page 108

BY MR. MAHON

"Q Notwithstanding, the fact it was closed, you managed to find an intake sheet on that; didn't you?
A She brought it to me –

–
–

Q Was it closed at the time of the petition?
A No, because it was not complete. She made a motion, I think she made a motion herself. I think her husband persuaded her.

He made promises to stop abusing her and made a statement for her to sign to drop it.

Q You kept this one because, in your opinion, it wasn't closed?
A I don't recall.

–
–

Q This was another one that you didn't throw away the dissolution of marriage sheet, did you, in the Ammons case?
A Well, it was still open.

Q Notwithstanding – "

Page 109

BY MR. MAHON

"A She had never come in to be briefed to go to final hearing.

Q She had never come back. You had never filed any more papers. All you prepared for her was the one paper and – but you didn't consider that closed, so you kept that?
A I was never informed that she dropped that case.

Q Let me go to the next one. That is Holmes.
A Yes.

Q Was the Holmes case closed?
A I don't remember.

Q Well, was there a final judgment entered in it?
A I believe there was.

–
–

Q Would you look at the papers involving Holmes and see if there was a final judgment entered on the 23rd of February, 1976?
A Yes, sir, there was indeed.

Q That was closed; wasn't it?
A That was 30 January, 1976. It was closed, yes, sir.

Q But you also had the dissolution of marriage form, your intake form, still in your files on that one?
A No, sir, I did not. She brought it back to me."

Page 110

BY MR. MAHON

"Q Another one who brought it in to you?
A Also to sign an affidavit.
Q How did she happen to bring it in to you?
—
—
Q Let me ask you this question: You advised the Court in your direct examination that when files were closed you disposed of all of the papers, including the intake sheet?
A Yes.
Q And, therefore, you couldn't tell the Court if you had charged lesser fees in any cases or how much you had charged; isn't that correct?
A In all the cases mentioned in the charges against me, those people returned to my office.
Q Every one of them? You have got every single sheet; haven't you? Tell me about the Touchtons bringing the paper back. Did Mrs. Touchton bring her paper back or did Mr. Touchton?
A I don't remember.
Q You don't remember that one?
A I do not remember."

Page 111

BY MR. MAHON

"Q They didn't bring it back and you had it, didn't you?

A I don't recall.
Q Where did it come from? You produced it in evidence.
A I would have to ask them.
Q Didn't you produce it? Where did you get it?
A It's two years ago, Mr. Mahon. I don't recall.
I have procedures that were undergoing changes all along. It's a very small part of my business and I do not recall these small details.
Q Let me ask you this: Of all of the cases that the Bar has charged you with, is there a single case, according to your intake sheet, where you have charged a reduced fee or less than the $50?
A I don't believe so.
Q Even if they are battered, on dope or no matter what the causes, they pay the full $50; correct? Is that right?
A Yes, sir."

Page 112

BY MR. MAHON

"A I don't give any advice, Mr. Mahon.
Q No legal advice at all?
A I don't know what legal advice is. I give no advice at all, period."

Page 113

BY MR. MAHON

"Q In other words, if a person is indigent or if they have got $100,000, you charge them the same, $50?
A I do the same work.

Q Is your answer yes?
A I would say yes.
Q Then, the basis for the need of your service that you perform for indigents, you do for any class. If a person is a $100,000 a year executive you are still willing to get them the divorce for the $50?
–
–
Q Or if they are rich they are?
A I wouldn't know.
Q You have no way of knowing?
A No, sir.
Q Now, may I ask you this, Ms. Furman: There is no contention on your part, as I understand it from your direct testimony, that you have any formal legal training; is that correct?
A I don't know what you mean by formal legal training.
Q Have you ever been to college or taken any formal courses relating to the practice of law?
If so, where and when?"

Page 114

BY MR. MAHON

"A I have taken legal stenography courses.
Q To learn how to type in shorthand, such as that; correct?
A It's also familiarity with legal phraseology.
Q Other than legal secretarial course, what, if any, legal training do you possess?
A None whatsoever.

–
–
Q Any person sitting in the audience, the bum on the street, the alcoholic, as far as qualifications are concerned, they would be as qualified to provide the service as you in that you have no legal training either?
A If they could take –"

Page 115

BY MR. MAHON

"THE WITNESS: I would say anyone who is able to type accurately, anyone who has put in 20 years as a court stenographer who understands basic procedures, anyone who has put in a number of years as a legal stenographer under the supervision of an attorney, yes, they would be qualified to do what I do.
–
–
Q Now, let me ask you this: There is no basic contention on your part that you only handle uncontested divorces. You do handle contested ones also; don't you?
A Yes, sir."

Page 116

BY MR. MAHON

"Q You also handle cases involving custody of children, alimony?
A Well, I type up the pleadings at the instruction of the people with the information they have given me.

Q And property; correct?
A That's their property to dispose of as they see fit.
Q Then there is no contention on your part that you only handle uncontested cases or that you only handle cases which do not involve children, alimony, child support and property rights?
A No, sir.
Q You handle them all?
A Whatever comes in the door and what people wish to dictate, the pleadings that they want, I type for them.
Q. Let me ask you this question: The people come in to you and they put down the wife is to have custody. Do you just type it down? Correct?
A Yes.
Q Whether she's an alcoholic or whether she's on narcotics or whether she's leased the child out every night and doesn't take care of them, you make no inquiry of that at all?
A That is for the other parent of the child to contend and for the Court to adjudicate. I am a stenographer. I put on paper what the people ask me to put on and leave the adjudication to the judges."

Page 118

BY MR. MAHON

"Q Of course, the time hasn't come for the payment of the trust yet either, has it?
A That is not my function.
Q You never handle those type of cases – where there is children, child custody and trust, and all of those, you make no inquiry. You charge them

the $50 and type it down and that's it.
A I would like to make inquiry but Brumbaugh forbids it.
Q Did you before Brumbaugh? These were before Brumbaugh, weren't they?
A Yes, sir."

Page 119

BY MR. MAHON

"Q You didn't make any inquiry then about those matters.
A There was a question in my mind whether or not that might constitute legal advice. No one has ever defined for me legal advice. Would you be kind enough to do so now?"

Page 122

BY MR. MAHON

"Q Mrs. Furman, at the present time are you asking – let me ask you this: Was your testimony that it is still necessary today for you to ask questions to supplement your printed forms?
A Clarification between the customer and the secretary requires that certain questions be asked."

Page 123

BY MR. MAHON

"Q That was a petition of dissolution of marriage ' that was filed after Brumbaugh, of course; wasn't it?
A Yes, it was.
Q Now, the initial pleadings, you left out that there were any children; didn't you? You didn't even

mention the children in the inital pleadings, did you?

A Obviously, children were not mentioned on the intake sheet.

Q You put it in there."

Page 124

BY MR. MAHON

"A Where was –

Q You put in the initial pleadings, you put in they had reached an agreement concerning how much child support was going to be paid. That was in there; wasn't it?

A It says here the parties, parents of minor children, blank, blank, and blank. Obviously there were three children. She must have put that in on the intake form.

Q Did you put it in the petition?

A Well, this is the petition. Oh, this is the amended petition.

Q Yes, that's the amended petition.

A Where is the original?

Q That's the petition you filed. You never put children in.

A I didn't file. The client files this themselves.

Q Who drew it?

A I don't recall.

Q Is it from one of your intake forms?

A Obviously, they must have put on the intake – whoever originally – whoever – I don't recall whether the male or female person came in.

Q You filed a petition for dissolution of marriage for these people charging them $50?

A Sir, I have never filed a dissolution of marriage for anyone."

Page 125

BY MR. MAHON

"Q Well, you drew –

A All righty.

Q You drew it?

A I typed it, let's say.

Q You didn't put in there were any children in there.

A Because on the intake form, if you put there are no children – I don't have a crystal ball. I go by the information on the intake form.

Q Why did you put in your original petition they had reached an agreement concerning that?

A I don't know.

Q Isn't it in there?

A Yes.

Q The question counsel asked you, had you ever made a mistake, would this have been one –

A Possibly."

Page 126

BY MR. MAHON

"Q Let me ask you something. Do you remember this case at all?

A Vaguely.

Q I noticed in there consistently throughout the case the papers filed with the Court give the husband's address as in Texas but I also notice consistently throughout the case the papers including his signature is notarized in your office.

A Obviously, that was his address that he wanted the final order mailed to.

–

–

Q You look at it and you see there was a certification that he was served those papers at the Texas address?

A Yes, I believe – I believe there is – I think he left town and came back to town when he was served with the papers. Served with the papers in Texas and he, himself, hand carried them back there.

Q No, ma'am, that wouldn't be correct.

A I don't know. I'd have to ask Mrs. Morales."

Page 127

BY MR. MAHON

"Q If you will look at the dates you will see the first papers he signed was the first date he came in, April the 2nd; wasn't it?

A I do not recall.

Q Look.

A I would suggest you get your information from Mr. and Mrs. Morales.

Q Would you look and see? Doesn't it show the first date that the papers were signed? Isn't it April the 2nd?

A I wish I had the intake sheet.

Q There is the court file.

A But you don't have the intake sheet.

Q Do you have it?

A I didn't know. I don't even know if it's been granted.

–

–

THE WITNESS: I don't know if it's been granted. If it's been granted, we no longer have it.

Has it been granted?

BY MR. MAHON:

Q There is a final judgment in there.

A Then we no longer have it.

Q I see. Let me ask you again, if you examine the court file, the court file shows that the original petition was notarized on what date?

A 10 April, '78."

Page 128

BY MR. MAHON

"Q Yes, ma'am. Now, it shows that a copy of the above was furnished by hand to the husband in El Paso, Texas; correct?

A This was notarized in my office as being signed by the wife. If it was served to him by hand, he either came here or the Sheriff in the county in Texas served him and the wife should have proof of service signed by the Sheriff of that county.

Q Then you go to the answer and waiver and it's signed by the Sheriff of that county.

A I know he came here.

Q He came here?

A I know that he – why don't you ask the Morales?

Q I don't know where they are.

A I would love to ask them myself.

Q You're on the stand. You don't know, or do you

know, whether he came here or whether he signed the papers?

A I know they were very strange people and very little understanding. Spoke broken English and had difficulty understanding the process but I know that these – nobody's signature gets notarized unless they are present in the flesh in front of the notary. That's a flat rule in my office.

Q Let me ask you this question: Did you include the provision in the stipulation which you drew that that man gave up all parental rights to that child and had to consent to any adoption thereafter and did you put that in the stipulation?"

Page 129

BY MR. MAHON

"A It must have been stated on his part if it had been done.

Q Do you know if anyone explained to him what that meant with regard to his –

A I have no idea. He can retain his own counsel wherever he is and get explanations if he wants them.

Q Where did the information come from? I don't see any place on your intake sheet.

A You have an intake sheet for these people?

Q I have an intake sheet you gave me in blank and there is nothing on it that says, "Do you want the child to be adopted," for the husband to sign. Is that any place on there?

A Only one person signs the intake sheet the petitioner. The respondent doesn't sign it.

Q Where did you get the information from that you

put in that joint stipulation that the husband wanted to give –

A From the petitioner.

Q Orally?

A I would presume. I don't know.

Q Fine. Then you are not really following Brumbaugh in all of its aspects?

A I'm afraid not, but I conformed to the extent that is possible."

FINDINGS

1. The foregoing facts show by a great weight of the evidence, Rosemary W. Furman, shielded behind the cloak of Northside Secretarial Service, has been engaged in the unauthorized practice of law for approximately three years.

2. That the Opinion in *Florida Bar vs Brumbaugh* is being interpreted by many as a license to individuals, who are trained and experienced in secretarial work, to practice law. This creates a grave danger to the citizens of Florida.

3. Throughout the entire proceedings in this case the word "client" has been used freely in reference to Rosemary W. Furman's customers, as being "Rosemary Furman's clients or her clients." To apply the word "client" to Rosemary Furman's customers is indirectly conveying some legal status to her. By custom, tradition and usage through the ages the word "client" has been so closely connected with legal parlance that one who seeks legal advice from an authorized practitioner becomes a "client" and the attorney-client relationship is established. When a qualified and licensed attorney-at-law represents a party in a legal matter, that party becomes a "client." Rosemary W. Furman did not have

any "clients," but she had several hundred customers to whom she provided legal advice and service. Her status is similar to that of a shopkeeper along the street.

> *Client* as defined in Black's Law Dictionary Fourth Edition (Page 321):
>
> "Client. A person who employs or retains an attorney, or counsellor, to appear for him in courts, advise, assist, and defend him in legal proceedings, and to act for him in any legal business. McCreary v. Hoopes, 25 Miss. 428."
>
> *1977 FLORIDA STATUTE 90.502 (Page 329) – Lawyer-client privilege.*
>
> "(1) For purposes of this section:
> (a) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.
> (b) A "client" is any person, public officer, corporation, association, or other organization or entity, either public or private, who consults a lawyer with the purpose of obtaining legal services or who is rendered legal services by a lawyer."

4. It is recognized as a legal and fundamental right of anyone to represent themselves in proper person in any court.

> *1977 FLORIDA STATUTE 454.18 (Page 199) – Officers not allowed to practice.*
>
> "And any person, whether an attorney or not, or whether within the exceptions mentioned above or not, may conduct his own cause in any court of this state, or before any public board, committee, or officer, subject to the lawful rules and discipline of such court, board, committee, or officer."

For those people who have the time and desire to represent themselves in proper person, it is recommended that they should have free access to the law libraries and the use of all the forms that have been approved by the Supreme Court of Florida; that the doors of all Circuit Court chambers should be open all the time to allow people to attend the hearings in chambers, to observe the procedure and proceedings, and to see and learn how it is done. The chambers should always be open, except when matters of great delicacy are being considered similar to the rule that generally prevails in courtrooms when jury trials are being held.

5. No person under the disguise of representing themselves have a right to hire for a fee or otherwise an unauthorized person to perform the legal steps necessary to obtain the dissolution of marriage or the adoption of a child under the pretext of self-representation. They are breaking the lawful rules and discipline of the Court, and are not being deprived of their civil right, because they forfeited that privilege when they violated the rules and discipline of the Court. In each of the cases reviewed, which were processed through Rosemary W. Furman's office, the petitioners were not representing themselves in proper person; they were actually hiring a third person, who is not a licensed and authorized legal advisor, to assist them. One who represents to the Court they are representing themselves in proper person and has actually employed a third party, who is an unlicensed person to assist them, is making false representation and is committing a fraud upon the Court and subjecting themselves to disciplinary action by the Court.

6. This record demonstrates very clearly the extent of harm and damage that can be done by an unlicensed and nonregulated person attempting to perform legal services for a third party. Children and their rights are ignored, wives are not being properly provided for, wives and children are being deprived of home and shelter to which they are entitled until the youngest child reaches majority, the wife is being deprived of her property rights and a fair share of the accumulated estate, the right of visitation of either parent with the children is ignored. That if this type of proceeding is allowed to continue unbridled as it now appears to be developing throughout the state, a chaotic mess will be created to the detriment of society as a whole.

7. Rosemary W. Furman in her direct testimony said that she "did not know what is legal advice". It is truly tragic when one is dealing in delicate legal matters, and not able to discern whether one is giving legal advice or not is a hazardous and dangerous thing. It could create damage and life-time misery and suffering to a multitude of people. It opens the door for great numbers of defenseless people to be victimized.

8. We recognize that the poor and infirm need legal representation, as well as anyone else. The Florida Bar should become conscious of the fact that much of the work that the legal profession and the courts are being called upon to perform in this age is social, as well as legal. It should take note of this immediately and make provisions so the legal aid service in every county will be capable and adequate to provide competent representation to those who are not able to pay. Fees should not be on a fixed and inflexible rate, but should be applied according to the work involved and the ability to pay by those who need the service of the

legal profession. Fees for mortgage foreclosures, probate, etc., are not fixed, but are based upon the amount involved or a reasonable amount to be fixed by the trial court.

9. The only way to protect the public from the hazards of unauthorized practice of law is for the Florida Bar to provide legal service to everyone who is in need. The Supreme Court could exercise its administrative and rule making power to stop this dangerous and insidious movement which, under the guise of a small fee, is leading many innocent people's future into mudholes and quicksand.

10. More lawyers should take a dissolution of marriage for a fee within the means of the parties to pay and set up reasonable payment plans. Also, more lawyers should take destitute wives' cases and ask the Court to allow reasonable attorney's fees, which the law permits, and in most cases the husband is working and can pay a reasonable fee on a reasonable payment plan. With the co-operation of the Courts, the Florida Bar, local bars, and lawyers, this procedure could be operated within the law and no one would need to seek an unlicensed third party to assist them. This will stop this unauthorized practice of law, which is a menace to society. It is the only way to protect the public from being victimized, damaged, and the suffering caused by those engaged in the unauthorized practice of law.

11. Rosemary W. Furman should be adjudged guilty of contempt of the Supreme Court of Florida, and permanently enjoined from engaging or pursuing any course of action personally or in her secretarial service that touches or resembles in any way the practice of law. She should be prohibited from typing legal papers of any kind, filling blanks on any legal forms, or giving oral or written advice or directions. The fact she is an expert stenographer does not give her any

legal right to engage in divorce and adoption practice anymore than a nurse has the right to set up an office for performing tonsillectomy or appendectomy operations or a dental assistant to do extractions or fill teeth.

Respectfully submitted this 17th day of August, A.D., 1978.

/s/ P. B. Revels
P. B. Revels
Referee

Copies to:

Lacy Mahon, Jr., Esquire and
Attorney for Petitioner
Mahon, Mahon, & Farley
350 East Adams Street
Jacksonville, Florida 32202

H. Glenn Boggs, Esquire
Attorney for Petitioner
Assistant Staff Counsel
Florida Bar
Tallahassee, Florida 32304

Albert J. Hadeed, Esquire and
Attorney for Respondent
Southern Legal Counsel, Inc.
115-A, Northeast 7th Avenue
Gainesville, Florida 32601

Alan B. Morrison, Esquire
Attorney for Respondent
Public Citizen Litigation Group
Washington, D.C.

IN THE SUPREME COURT
OF THE
STATE OF FLORIDA

ROSEMARY W. FURMAN, d/b/a
NORTHSIDE SECRETARIAL SERVICE,
Appellant

v. No. 51,226

THE FLORIDA BAR,
Appellee

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Rosemary W. Furman, d/b/a Northside Secretarial Service, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final injunction of the Supreme Court of the State of Florida originally entered in this action on May 10, 1979, and revised on rehearing on November 1, 1979.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

/s/ Albert J. Hadeed,

Albert J. Hadeed, Esquire
Southern Legal Counsel, Inc.
115-A N.E. Seventh Avenue
Gainesville, Florida 32601

Alan B. Morrison, Esquire
Public Citizen Litigation Group
2000 "P" St., N.W.
Suite 700
Washington, D.C. 20036

Attorneys for Appellant

[Served: November 14, 1979]
[Filed: November 16, 1979]

Supreme Court, U.S.
FILED
DEC 28 1979

IN THE
Supreme Court of the United States
OCTOBER TERM, 1979

No. 79-844

ROSEMARY FURMAN, d/b/a
NORTHSIDE SECRETARIAL SERVICE

Appellant,

v.

THE FLORIDA BAR,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

MOTION TO DISMISS AND AFFIRM

LACY MAHON, JR.

Bar Counsel
350 E. Adams St.
Jacksonville, Florida 32202
(904)

H. GLENN BOGGS

Assistant Staff Counsel
The Florida Bar
Tallahassee, Florida 32304
(904) 222-5286

Attorneys for Appellee

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	2
A. Facts	2-4
B. Proceedings Below	4-5
THE APPEAL SHOULD BE DISMISSED BECAUSE IT DOES NOT STATE A SUBSTANTIAL FEDERAL QUESTION . .	5-9
THE COURT SHOULD AFFIRM THE FLORIDA SUPREME COURT BECAUSE THE OPINION BELOW IS CORRECT	9-13
THE COURT SHOULD AFFIRM THE FLORIDA SUPREME COURT BECAUSE THE UNIQUE FACTS PRESENTED HEREIN DO NOT PROVIDE AN APPROPRIATE VEHICLE FOR AN EXAMINATION OF BROAD CONSTITUTIONAL PRINCIPLES	13-16
CONCLUSION	16

TABLE OF AUTHORITIES

Cases:

Agersinger v. Hamlin, 407 U.S. 25(1972)	8
Airey Case, Council of European Court of Human Rights, decided October 9, 1979 . . .	9
Bates v. State Bar of Arizona, 433 U.S. 350(1977)	3

Boddie v. Connecticut, 401 U.S. 371(1971)	6, 7
The Florida Bar v. Brumbaugh, 355 So.2d 1186 (Fla. 1978)	passim
Gideon v. Wainwright, 372 U.S. 335(1963)	8
Goldfarb v. Virginia State Bar, 421 U.S. 773(1975)	13
Johnson v. Avery, 393 U.S. 483(1969)	6, 8
Leis v. Flynt, __ U.S. __ (1979), 99 S. Ct. 698(1979)	14
Matter of Warden of Wisconsin State Prison, 541 F.2d (1976)	7
Moeck v. Zajackowski, 305 F. Supp. 463 (W.D. Wis. 1974) . .	7
Ohralik v. Ohio State Bar Ass'n., 436 U.S. 447(1978)	12, 13
Ortwein v. Schwab, 410 U.S. 656(1973)	7
United States v. Kras, 409 U.S. 434(1973)	7

Other Authorities

Rule 16, Supreme Court Rules	1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-844

ROSEMARY FURMAN, d/b/a
NORTHSIDE SECRETARIAL SERVICE

Appellant,

v.

THE FLORIDA BAR

Appellee.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

MOTION TO DISMISS AND AFFIRM

Pursuant to Rule 16 of the Supreme Court Rules, the appellee respectfully moves this Court to dismiss this appeal or, in the alternative, to affirm the judgment of the Florida Supreme Court below. Should this Court construe this appeal as a petition for certiorari, the appellee moves the Court to deny such petition.

STATEMENT OF THE CASE

A. Facts

Appellee disputes portions of the appellant's statement of the case in the Jurisdictional Statement (hereinafter referred to as Jur. St.) as follows.

Appellant correctly asserts that Florida is a "no-fault" divorce state and also that Florida law specifically permits any individual to represent himself in legal actions including a dissolution of marriage proceeding. Appellant then states, (Jur. St., page 4) "Despite this apparent simplicity, it is an undisputed fact that most people are unable to obtain a divorce in Florida without assistance." Appellant does not cite the record to establish this fact and appellee questions it. The Florida Supreme Court permits laypersons to sell printed dissolution of marriage forms and written explanations of legal procedures. The Florida Bar v. Brumbaugh, 355 So.2d 1186, 1194 (Fla. 1978). This Court may wish to take judicial notice of the fact that major Florida newspapers routinely carry advertisements by form or "kit" sellers - leading to the conclusion that many people do in fact represent themselves in obtaining a dissolution of marriage.

The appellant next attempts to pursuade the Court that there exists a class of persons in Jacksonville, Florida, where appellant works, who are too affluent to qualify for legal aid, yet still indigent (apparently measured by appellant's financial yardstick). Appellant would have this Court permit her to allow this alleged class of persons who are "too well off, yet not well off enough" to rely on her for legal advice. However, her advice is not gratuitous, but is for a fee. Appellant admits (Jur. St., page 5) that "What she has done has been to take the information that her clients have given her and type the necessary documents." It seems impossible to characterize appellant's service as anything other than one of determining what legal remedy her customer seeks and then preparing the legal instruments which she believes appropriate to effect the desired relief. For that service, appellant regularly charges $50.

Appellant next accurately asserts that attorneys' fees for divorces in Florida have declined since this Court's ruling in Bates v. State Bar of Arizona, 433 U.S. 350 (1977). However, appellant alleges, without any apparent foundation, that Florida attorneys' fees are, "still far in excess of what most of appellant's clients can afford." Appellee disputes this contention.

The full effect of attorney advertising has yet to be felt in Florida and attorneys' fees for dissolutions may decline to a level lower than that charged by appellant. In addition, if customers can "afford" to pay the appellant's fee, are they be unable to "afford" to pay a licensed attorney $60 or even $100?

B. Proceeding Below

The appellant correctly states (Jur. St., page 6) that the Florida Supreme Court's decision in Brumbaugh changed the rules of unauthorized practice of law relative to lay assistance in dissolution proceedings. The appellant added that "the Court specifically authorized persons such as appellant and Ms. Brumbaugh to type legal papers tailored to the client's circumstances." Appellee contends that this statement is erroneous since the decision permitted Ms. Brumbaugh to "engage in a secretarial service, typing such forms for her clients, provided that she only copy the information given to her in writing by her clients." (emphasis added) Brumbaugh at 1194.

It would appear that the aim of the Florida Supreme Court is to allow laypersons to assist

customers to prepare their own papers, but not to allow the customers to rely on the laypersons for legal advice in the preparation of the papers.

The appellant next states that the referee heard testimony after the parties stipulated to many facts, "including that no client of appellant had ever suffered any harm from her services." (Jur. St. page 7 and 8). On the contrary, the appellee stipulated that, "the parties agreed that the customers did not think or know that they had suffered any damage as a result of Respondent's services. . . ." (emphasis added) (Jur. St. page 28a).

THIS APPEAL SHOULD BE DISMISSED BECAUSE IT DOES NOT STATE A SUBSTANTIAL FEDERAL QUESTION.

Appellee contends that the question presented by the appellant is fundamentally deficient by its own terms. The appellant asks whether Florida may apply its unauthorized practice of law rules to require indigents seeking adoption or divorce, and who are unable to prepare the necessary legal documents themselves, to employ a licensed

attorney charging fees they can't afford, rather than appellant whose fees they can afford.

The question assumes, although the facts in the record don't necessarily show, that there is a class of persons in Jacksonville, Florida, who: (1) lack the ability to represent themselves in seeking a dissolution; (2) are too affluent to qualify for free legal aid; (3) are too poverty sticken to afford a licensed attorney (who, appellant admits, have lowered their fees since the referee hearing in July, 1978); and (4) are nevertheless affluent enough to afford appellant. In addition, appellant assumes that the fees charged by both appellant and Jacksonville attorneys are static rather than dynamic (since if either appellant's fees go up or attorneys' fees go down the financial advantage to the class appellant allegedly seeks to protect is lost).

Appellant generally rests her argument on two different chains of decisions which protect the rights of indigents - one started by Boddie v. Connecticut, 401 U.S. 371 (1971) and the other by Johnson v. Avery, 393 U.S. 483 (1969). Both of these cases and their prodigy protect the rights of indigents to access to the courts, but neither is particularly relevent to the facts presented by this case.

The appellant cites Boddie for the proposition that the state may not deny a person the fundamental right to obtain a divorce on economic grounds where the state controls the exercise of that right by charging a filing fee (Jur. St. at 10). To apply Boddie to these facts would require a major extension of that rule. Obviously, Florida does not compel anyone to employ an attorney in dissolution proceedings. As appellant pointed out (Jur. St., page 10) this Court has declined to extend the Boddie doctrine into other areas. United States v. Kras, 409 U.S. 434 (1973); Ortwein v. Schwab, 410 U.S. 656 (1973). Even the language of this Court's holding in Boddie was carefully worded to limit the decision to the case before the Court when the "bona fides of . . . appellant's indigency . . . [is] beyond dispute." Boddie at 382.

Appellant cites several cases in which Boddie was applied in a manner which supports appellant's position. It should be noted, however, that one of these cases, Moeck v. Zajackowski, 305 F. Supp. 463 (W.D. Wis. 1974), was reversed on appeal, Matter of Warden of Wisconsin State Prison, 541 F. 2d (1976) thus further limiting judicial expansion of this theory.

The Johnson decision, cited by appellant, stands for the proposition that persons physically imprisoned may not be denied certain types of legal assistance. That situation is entirely different from the facts of this case.

This Court has repeatedly recognized that indigents charged with crimes are to be afforded a greater amount of legal assistance than are indigents in civil cases. Gideon v. Wainwright, 372 U.S. 335 (1963); Agersinger v. Hamlin, 407 U.S. 25 (1972). Johnson would seem to be a logical extension of these extra protections afforded in criminal situations. But even in Johnson, the state was permitted to, "impose reasonable restrictions and restraints upon the acknowledged propensity of prisoners to abuse both the giving and the seeking of assistance . . . for example, by limitations on the time and location of such activities and the imposition of punishment for the giving or receipt of consideration in connection with such activities." Johnson at 490.

The instant case does not concern criminal indigents who are physically restrained from access to courts or even from access to legal aid. Again, appellant does not seek to provide these indigents with qualified legal aid, rather she offers only her own services.

Appellee would emphasize to the Court that appellant cites the Airey case, decided by the European Court of Human Rights as, "perhaps the most instructive decision." (Jur. St., page 13) Such a construction is intriguing since the European Court suggested that Ireland provide Mrs. Airey with a lawyer, not a layperson, to assist her. It should also be noted that Mrs. Airey could only obtain relief from the Irish High Court, not the lower courts as contrasted with the situation in Florida. In addition, no free legal aid was available to her. Indeed, appellee submits that if Irish divorces were granted under the same procedures and circumstances as are dissolutions in Jacksonville, Florida, Mrs. Airey would have clearly lost her case. See Airey case, pages 11-12.

THE COURT SHOULD AFFIRM THE FLORIDA SUPREME COURT BECAUSE THE OPINION BELOW IS CORRECT

It is clear that the injunction handed down from the Florida Supreme Court which binds the appellant in this case rests on the Florida court's prior decision in Brumbaugh. There, the court explained the rationale it used in approaching a case such as this one, as follows:

But in cases such as this, the Florida Supreme Court is not confined to act solely in its judicial capacity. In addition, it acts in its administrative capacity as chief policy-maker, regulating the administration of the court system and supervising all persons who are engaged in rendering legal advice to members of the general public. Such authority carries with it the responsibility to perform this task in a way responsive to the needs and desires of our citizens. This principle has long been our goal. In State v. Sperry, 140 So.2d 587, 595 (Fla. 1962), we noted:

> The reason for prohibiting the practice of law by those who have not been examined and found qualified to practice is frequently misunderstood. It is not done to aid or protect the members of the legal profession either in creating or maintaining a monopoly or closed shop. It is done to protect the public from being advised and represented in legal matters by unqualified persons over whom the judicial department can exercise little, if any, control in the matter of infractions of the code of conduct which, in the

> public interest, lawyers are bound to observe.
>
> The Florida Bar as an agent of this Court, plays a large role in the enforcement of Court policies and rules and has been active in regulating and disciplining unethical conduct by its members. Because of the natural tendency of all professions to act in their own self interest, however, this Court must closely scrutinize all regulations tending to limit competition in the delivery of legal services to the public, and determine whether or not such regulations are truly in the public interest.

The Florida court then went on to discuss such constitutional rights as commercial free speech, access to the courts, the right to pursue a lawful occupation or business, and the right of self representation. (Brumbaugh 1190, 1192-1193.) Ultimately, the court exercised its power to regulate the practice of law in Florida by fashioning an injunction, which in its view, placed the minimum weight of restrictions on the constitutional rights at issue while simultaneously protecting Florida citizens from potentially harmful reliance on unauthorized legal practitioners.

This Court's decision in Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978) approved the concept of minimum state regulation designed to prevent future harm to the public in the area of solicitation of business by attorneys by stating:

> The rules prohibiting solicitation are prophylactic measures whose objective is the prevention of harm before it occurs.
>
> . . .
>
> The efficacy of the State's effort to prevent such harm to prospective clients would be substantially diminished if, having proved a solicitation in circumstances like those of this case, the State were required in addition to prove actual injury.
>
> . . .
>
> If appellant's view were sustained, in-person solicitation would be virtually immune to effective oversight and regulation by the State or by the legal profession[28] in contravention of the State's strong interest in regulating members of the Bar in an effective, objective, and self-enforcing manner. It therefore is not unreasonable or violative of the Constitution for a State to respond with what in effect is a prophylactic rule.[29]

The appellee submits that the injunction below rests on the same type of rule previously approved by this court in Ohralik.

THE COURT SHOULD AFFIRM THE FLORIDA SUPREME COURT BECAUSE THE UNIQUE FACTS PRESENTED HEREIN DO NOT PROVIDE AN APPROPRIATE VEHICLE FOR AN EXAMINATION OF BROAD CONSTITUTIONAL PRINCIPLES.

If this Court should grant the relief sought by the appellant it would, in effect, be deciding what conduct amounts to the practice of law in Florida. If appellant is permitted to allow the public to rely on her for services which can hardly be characterized as anything but legal services, the scope of activity defined as the practice of law in Florida must necessarily contract.

Historically, this Court has left such definition and regulation to the state judiciary. In Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975) this Court said,

> We recognize that the States have a compelling interest in the practice of professions within their boundaries, and that as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions . . . .
>
> The interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been "officers of the courts." (at 792)

Also, as recently as January, 1979, this Court rejected a constitutional challenge to the authority of Ohio courts to regulate admission of out-of-state attorneys to practice in particular cases. In Leis v. Flynt, ____ U.S. ____ (1979), 99 S.Ct. 698 (1979) this Court said,

> We do not question that the practice of courts in most States is to allow an out-of-state lawyer the privilege of appearing upon motion, especially when he is associated with a member of the local bar.

. . .

> But it is not a right granted either by statute or the Constitution. Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions. The States prescribe the qualifications for admission to practice and the standards of professional conduct.

If Florida were required to permit the appellant to practice law, what rational basis could be used to prohibit other unlicensed and untrained persons from delivering, or attempting to deliver, the same services offered by the appellant? Surely this is a clear risk of harm to the public which is foreseeable and which may be constitutionally prohibited by the highest court of a state.

Finally, the appellant (Jur. St., page 15) advised this Court that the Florida Supreme Court directed the appellee to complete a study of better ways to provide legal services to indigents. Appellant stated that the study had barely begun. On the contrary, appellee has responsibly approached the task of completing the

study, and has very nearly finished it. A request has been lodged with the Florida Supreme Court to permit filing of the report not later than February 1, 1980.

CONCLUSION

For the foregoing reasons, this Court should either dismiss this appeal or affirm the opinion of the Florida Supreme Court.

Respectfully submitted,

Lacy Mahon, Jr.
Bar Counsel
350 East Adams Street
Jacksonville, Florida 32302
(904)354-4300

H. Glenn Boggs
Assistant Staff Counsel
The Florida Bar
Tallahassee, Florida 32304
(904)222-5286

Attorneys for Appellee

ROSEMARY FURMAN, d/b/a
Northside Secretarial Service

Appellant,

v.

Case Number

79-844

THE FLORIDA BAR

Appellee.
_____/

Printing Correction

The appellee would respectfully draw the Court's attention to the omission of the page number from the citation of Matter of Warden of Wisconsin State Prison on pages (ii) and 7 which should read Matter of Warden of Wisconsin State Prison, 541 F. 2d 177 (1976). A copy of this document has been enclosed in each copy of appellee's Motion to Dismiss and Affirm.

H. Glenn Boggs

H. Glenn Boggs
Assistant Staff Counsel
The Florida Bar
Tallahassee, Florida 32304
(904) 222-5286